

## **California Code of Regulations – Funeral Law**

### **Division 12. State Board of Funeral Directors and Embalmers**

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#### **Article 1. General Provisions**

**§ 1200. Location of Offices.** [Repealer filed 7-3-86]

**§ 1201. Tenses, Gender, and Number.** [Repealer filed 7-3-86]

#### **§ 1202. Delegation of Certain Functions**

The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the business-like dispatch of the business of the board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer.

Note: Authority cited: Sections 7606 and 7607.5, Business and Professions Code. Reference: Sections 7606 and 7607.5, Business and Professions Code; and Section 11500 et seq., Government Code.

#### **History**

1. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).

**§ 1203. Filing of Addresses**

Each person holding a certificate of registration, license, permit or any other authority to practice or engage in any activity in the State of California under any and all laws administered by the State Board of Funeral Directors and Embalmers shall file his proper and current mailing address with the Board at its office in Sacramento and shall immediately notify the Board at its said office of any and all changes of mailing address, giving both his old and his new address.

**Article 1.5. Funeral Director**

**§ 1204. Management of Funeral Establishment**

(a) Any person, association, partnership, corporation or other organization licensed and conducting business as a funeral establishment shall designate a licensed funeral director to manage the establishment, and shall report the designation to the Board within 10 days of the effective date of the designation.

(b) The designated managing licensed funeral director of a licensed funeral establishment shall be responsible for exercising such direct supervision and control over the conduct of said funeral establishment as is necessary to ensure full compliance with the Funeral Directors and Embalmers Law, the provisions of this chapter and the applicable provisions of the Health and Safety Code. Failure of the designated managing licensed funeral director and/or the licensed funeral establishment to exercise such supervision or control, or failure of the holder of the funeral establishment license to make such designation shall constitute a ground for disciplinary action.

(c) A licensed funeral establishment may, upon approval by the Board, designate a licensed funeral director to manage more than one facility under the following conditions:

- (1) the licensed funeral establishments are under common ownership, and;
- (2) the common owners have designated one funeral establishment as the main office. The main office is defined as a designated location registered with the Board where the principals of the funeral establishment can be contacted, and;
- (3) the remaining establishments must be within a 60 mile radius of the main office, and;
- (4) the licensed funeral establishments requesting permission from the Board to use one designated managing licensed funeral director, must make a written request, on a form 21F-12 (4/93) provided by the Board. An inspection shall be scheduled and completed to ensure that the conditions set forth in this section have been satisfied.

(d) A funeral director who advertises his or her services shall hold a current, active license, and shall include his or her license number, the name and license number of the funeral establishment at which he or she is employed, and the name of the city or

community where the funeral establishment is located on any television and print advertising including, but not limited to, telephone and other directory listings, and newspaper and magazine advertisements.

Note: Authority cited: Sections 7606 and 7616.2, Business and Professions Code. Reference: Sections 7606, 7616, 7616.2, 7618, 7619, 7620, 7621, and 7622, Business and Professions Code.

History

1. New article 1.5 (sections 1204-1205) and section filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

**§ 1205. Review of Funeral Director License Applications; Processing Time**

(a) The Board shall inform an applicant for a funeral director license, in writing, within seven (7) days of receipt whether the application is complete and acceptable for filing or is deficient and what specific information is required to complete the application.

(b) The Board shall make a decision within sixty (60) days after the date the application is deemed to be completed whether the applicant meets the requirements for licensure. "Completion of an application" means that a completed application form together with all required information, documentation and fees has been filed by the applicant.

(c) The minimum, median and maximum processing times for an application for a funeral director license from the date of acceptance and filing of the initial application until the Board makes a final decision on the application are:

(1) Minimum-(1) day.

(2) Median-(10) days.

(3) Maximum-(60) days.

Note: Authority cited: Section 7615, Business and Professions Code; and Section 15376, Government Code. Reference: Sections 7615, 7618, 7619, 7621, and 7622 Business and Professions Code; and Section 15376, Government Code.

History

1. New section filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

## **Article 2. Funeral Establishments**

### **§ 1208. Application for Funeral Establishment License**

Within 10 days after the receipt of an application for a funeral establishment license, notice of such filing shall be sent to such persons and organizations as the Executive Officer of the Board may deem expedient, located at or near the place where such applicant proposes to engage in business as a funeral establishment, and to such other persons or organizations that may request such information.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7607.5, 7617, 7617.1, 7619.3 and 7621, Business and Professions Code.

#### **History**

1. Originally published 12-5-46 (Title 16).
2. Amendment filed 11-4-47 as an emergency (Register 10, No. 2).
3. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).
4. Change without regulatory effect amending article heading filed 4-15-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 16).
5. Amendment of section heading, section and Note filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

### **§ 1208.1. Review of Funeral Establishment License Applications; Processing Time**

(a) The Board shall inform an applicant for licensure as a funeral establishment, in writing, within ten (10) days whether the application is complete and accepted for filing or is deficient and what specific information is required to complete the application.

(b) The Board shall make a decision within ninety (90) days after the date the application is deemed to be completed whether the applicant meets the requirements for licensure. "Completion of an application" means that a completed application form, together with all required information, documentation and fees, has been filed by the applicant. This period may be extended if the applicants' proposed facility is not ready for or fails to pass any required inspection.

(c) The minimum, median and maximum processing times for an application for licensure as a funeral establishment from the date of acceptance and filing of the initial application until the Board makes a final decision on the application are:

- (1) minimum-(40) days.
- (2) median-(70) days.
- (3) maximum-(90) days.

Note: Authority cited: Section 7606, Business and Professions Code; and Section 15376, Government Code. Reference: Sections 7618-7627, Business and Professions Code; and; Section 15376, Government Code.

#### **History**

1. New section filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).
2. Amendment of section heading and section filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

### **§ 1209. Ambulances, Hearses, and First-Call or Pickup Cars**

All ambulances, hearses and first-call or pickup cars and the equipment therein shall be kept clean and sanitary and free from deleterious odors at all times. Such vehicles shall be cleansed with a suitable and effective disinfectant, immediately after being used to transport human remains dead of any contagious disease, or as soon thereafter as practical, so as not to endanger the public health or safety.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7606 and 7707, Business and Professions Code.

#### **History**

1. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).
2. Change without regulatory effect amending section filed 4-15-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 16).

### **§ 1210. Funeral Establishment License, Possession of**

The certificate of licensure shall remain the property of the State of California, in possession of the licensee only so long as he/she or it exercises the license at the location specified in the license, and said certificate shall be surrendered to the State Board of Funeral Directors and Embalmers upon change of address, change of name, assignment or upon discontinuance of business at the specified address. This rule shall not prevent a licensed funeral director from conducting a funeral in another licensed establishment, nor shall it prevent a licensed funeral director from conducting a funeral at a church, cemetery, home, public hall, lodge room, or other suitable place.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7617, 7620, 7624, 7625 and 7628, Business and Professions Code.

#### **History**

1. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).
2. Change without regulatory effect amending section heading filed 4-15-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 16).

### **§ 1211. Name of Funeral Establishment**

(a) A funeral establishment shall include its name and license number, exactly as shown by the Board's records, and city or community where located in all television and print advertisements, including but not limited to telephone and other directory listings, television, newspaper, and magazine advertisements.

(b) Each applicant for a funeral establishment license shall select one specific trade name under which the license is to be issued and held. Such trade name may not include "also known as" ("aka") designations, but must be a word or group of words combined to form one specific trade name.

(c) A funeral establishment shall not operate under a name utilizing an “also known as” (“aka”) designation, or which bears two (2) or more separate and distinct name styles.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Section 7629, Business and Professions Code.

History

1. Amendment filed 11-14-57; effective thirtieth day thereafter (Register 57, No. 20).
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49). (c)
3. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).
4. Amendment filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

**§ 1212. Manager of Funeral Establishment [Repealer filed 7-3-86]**

**§ 1213. Change in Corporate Officers, Designated Managing Funeral Director, or Ownership**

(a) Where there is a change in the corporate officers or the designated managing licensed funeral director of a funeral establishment, such change, including the names and titles of the new corporate officers or the name of the new designated managing licensed funeral director, shall be reported to the Board, in writing, within ten (10) days of such change on the form NC1 (12/93) prescribed by the Board accompanied by the fee fixed by this division.

(b) Any transfer, in a single transaction or in a related series of transactions, of more than fifty percent (50%) of the equitable interest in the ownership of a licensed funeral establishment shall constitute a change of ownership and shall require assignment of the funeral establishment license, subject to the provisions of Section 7630, Division 3, Chapter 12, Article 2 of the Business and Professions Code. Such proposed change shall be reported to the Board no later than thirty (30) days prior to the effective date thereof, however, no public notice shall be given by the Board until after the effective date of the transaction.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7606, 7618, 7619, 7622 and 7630, Business and Professions Code.

History

1. New section filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
2. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).
3. Amendment of section heading and section filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

**Article 3. Embalming**

**§ 1214. Authorization for Disposition with and Without Embalming**

Except as otherwise provided in Health and Safety Code Section 7304, human remains shall not be embalmed without the express authorization of a person having the legal right to control disposition of the remains. Such authorization shall be secured by use of the form prescribed by the Board, attached hereto as Exhibit 1, and made a part of this regulation. The form shall be used in the exact form set forth below, without additions, substitutions, or amendments.

EXHIBIT 1

AUTHORIZATION FOR DISPOSITION WITH OR WITHOUT EMBALMING

TO: \_\_\_\_\_ (Funeral Establishment Name)

RE: \_\_\_\_\_ (Decedent) I, \_\_\_\_\_

do \_\_\_do not \_\_\_(check one) request embalming, which I understand is the addition to, or the replacement of, body fluids by chemical preservatives or the application of chemical preservatives for the temporary preservation of the body. I understand that embalming is not required by law.

I understand that for storage or embalming purposes the decedent may be transported to the following licensed funeral establishment:

\_\_\_\_\_  
(name and address of funeral establishment)

then returned for funeral services. I understand I may be charged an additional fee for transport.

The undersigned hereby represents that he/she has the legal right to control disposition of the remains of the decedent.

Signed: \_\_\_\_\_, Relationship \_\_\_\_\_

Executed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at City \_\_\_\_\_, State \_\_\_\_.

To Be Completed by funeral establishment if Authorization to Embalm and Notification to Transport Is Obtained Orally (by Telephone):

The above statement of authorization and notification was read to \_\_\_\_\_, Relationship \_\_\_\_\_, who did \_\_\_did not \_\_\_(check one) authorize embalming at the above named funeral establishment. City \_\_\_\_\_, State \_\_\_\_\_, Phone (\_\_\_\_\_) Date and time authorization granted: \_\_\_\_\_

Signature of funeral establishment representative accepting authorization.

I declare under penalty of perjury that the foregoing is true and correct. Executed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at City \_\_\_\_\_, State \_\_\_\_.

(s) \_\_\_\_\_

Note: Authority cited: Section 7606 and 7616, Business and Professions Code. Reference: Section 7606, Business and Professions Code.

History

1. New section filed 6-22-79; effective thirtieth day thereafter (Register 79, No. 25).
2. Amendment filed 7-3-80; effective thirtieth day thereafter (Register 80, No. 27).
3. Amendment of section and Note filed 10-31-97; operative 11-30-97 (Register 97, No. 44)

**§ 1215. Attire While Embalming**

Every person, while engaged in actually embalming human remains, shall be attired in a clean and sanitary smock or gown covering the person from neck to below the knees, and shall, while so engaged, wear impervious gloves; and the body being embalmed shall at all times be so covered as to insure the privacy of said body.

History

1. Change without regulatory effect amending section filed 4-15-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 16).

**§ 1216. Sanitation**

(a) All preparation, embalming or storage room shall, at all times, be kept and maintained in a clean and sanitary condition.

(b) Every preparation, embalming or storage room shall be provided with proper and convenient receptacles for refuse, bandages, cotton and other waste materials and supplies. All such waste materials shall be disposed of in accordance with State and local health and sanitation requirements or in such a manner as not to endanger the public health and safety.

(c) All instruments, appliances and equipment used in the embalming or other preparation and handling of human remains shall be thoroughly cleansed and disinfected immediately at the conclusion of each individual case.

(d) All areas of a funeral establishment which are open to public use or occupancy shall be kept and maintained in a clean and orderly condition so as not to endanger the public health and safety.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7606 and 7707, Business and Professions Code.

History

1. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).
2. Change without regulatory effect amending subsection (c) filed 4-15-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 16).

**§ 1217. Preparation or Storage Room and Destruction of Waste Materials**

[Repealer filed 7-3-86]

**§ 1218. Sanitary Condition of Mortuaries** [Repealer filed 7-3-86]

**§ 1219. Embalming Table** [Repealer filed 7-3-86]

**§ 1220. Ventilation of Preparation Room** [Repealer filed 6-13-56]

## **§ 1221. Care and Preparation for Burial**

(a) The care and preparation for burial or other disposition of all human remains shall be strictly private, and no one shall be allowed in the embalming or storage room while human remains are being embalmed or prepared for disposition, except the licensed funeral director and his duly authorized officers and/or employees, licensed embalmers and their duly registered apprentices, instructors of the science of embalming in embalming schools or colleges duly accredited by the Board and their students, and except public officials in the discharge of their duties; provided, that this rule shall not apply to duly accredited nurses employed in a case, nor to members of the immediate family of the deceased as defined by section 7100 of the Health and Safety Code.

(b) All human remains being transferred into or out of a funeral establishment or storage facility, except in a casket, shall be covered and kept out of the public view, to the extent reasonably possible.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7606, 7616, 7704 and 7707, Business and Professions Code.

### **History**

1. Amendment filed 2-11-75 as an emergency; effective upon filing. Certificate of Compliance included (Register 75, No. 7).
2. Editorial correction (Register 75, No. 35).
3. New subsection (b) filed 6-15-88; operative 7-15-88 (Register 88, No. 25).
4. Change without regulatory effect amending section filed 4-15-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 16).

## **§ 1222. Embalming Fluids**

No embalming fluids shall be used in embalming which contain heavy minerals or metallic substances which have a poisonous effect, such as arsenic, lead and mercury.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7606 and 7707, Business and Professions Code.

### **History**

1. New section filed 8-11-53 as an emergency; designated effective 9-9-53 (Register 53, No. 13).
2. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 7).

## **§ 1223. Embalming, Preparation and Storage Rooms**

(a) No embalming, preparation or storage room shall be located in any public storage, mini-storage, mini-warehouse, multi-unit storage complex or similar facility used by members of the general public for the storage of goods. Any existing embalming, preparation or storage room located in a prohibited facility shall be relocated and brought into full compliance with this section, within twelve (12) months of this subsection's effective date.

(b) Every licensed funeral establishment shall maintain in its embalming, preparation and/or storage room, a sufficient supply of a suitable and effective disinfectant to provide for the cleansing and disinfection of the facility and its contents.

(c) Every licensed funeral establishment and funeral director who holds unembalmed human remains for a period longer than 24 hours shall cause the body to be refrigerated at an approved facility with sufficient capacity as defined under section 1223.1(d).

(d) All embalming, preparation or storage rooms shall contain only the equipment and supplies necessary for the preparation or care and handling of human remains for disposition or transportation.

(e) As used in this chapter, a storage room is a suitable room, other than a chapel, viewing or visitation room, office, supply room, closet or other room open to public access, which is used by a licensed funeral establishment for the storage or holding of human remains prior to effecting disposition. A storage room may be maintained in conjunction with an embalming or preparation room.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7606, 7616, 7621, 7630, 7704 and 7707, Business and Professions Code.

#### History

1. New section filed 2-29-56; effective thirtieth day thereafter (Register 56, No. 4).
2. Amendment filed 6-13-56; effective thirtieth day thereafter (Register 56, No. 12).
3. Amendment filed 2-11-75 as an emergency; effective upon filing. Certificate of Compliance included (Register 75, No. 7).
4. Editorial correction (Register 75, No. 35).
5. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).
6. Relettering of former subsections (a)-(d) to subsections (b)-(e), new subsection (a) and change without regulatory effect of subsection (e) filed 6-15-88; operative 7-15-88 (Register 88, No. 25).
7. Amendment filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

### **§ 1223.1 Shared Preparation and Storage Rooms**

A licensed funeral establishment may share a preparation and/or a storage room with other licensed funeral establishments, upon approval by the Board, under the following conditions:

(a) the licensed funeral establishments are under common ownership or have a contractual agreement to share a preparation and/or storage room;

(b) the common owners have designated one funeral establishment as the main office as defined in Section 1204(c)(2);

(c) the remaining establishments or the establishments using the facilities of the main office are within a 60 mile radius of the main office;

(d) the licensed funeral establishment in which the common storage room is located has designated a separate labeled area within the storage room for each of the

establishments using its facilities and has sufficient capacity to accommodate each licensee using the space;

(e) An identification and labeling system shall be in place to effectively identify the human remains being prepared and/or stored in the facilities;

(f) The facilities meet the requirements as specified in Section 7616 of the Business and Professions Code and have passed inspection by the Board to determine its suitability for shared purposes;

(g) A licensed funeral establishment requesting permission from the Board to share their preparation and/or storage room, must make a request, in writing, on a form 21F-12 (4/93) provided by the Board. An inspection will then be scheduled and completed to ensure that the above mentioned conditions have been met before the establishment can begin sharing its facilities.

Note: Authority cited: Section 7606 and 7616, Business and Professions Code. Reference: Sections 7606, 7616, 7621, 7630, 7704 and 7707, Business and Professions Code.

History

1. New section filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

**§ 1224. Equipment Requirements** [Repealer filed 7-3-86]

**Article 4. Apprentices**

**§ 1225. Review of Apprentice Embalmer Registration Applications; Processing Time**

(a) The Board shall inform an applicant for registration as an apprentice embalmer, in writing, within seven (7) days whether the application is complete and acceptable for filing or is deficient and what specific information is required to complete the application.

(b) The Board shall make a decision within sixty (60) days after the date the application is deemed to be completed whether the applicant meets the requirements for registration. "Completion of an application" means that a completed application form together with all required information, documentation and fees has been filed by the applicant.

(c) The minimum, median and maximum processing times for an application for registration as an apprentice embalmer from the date of acceptance and filing of the initial application until the Board makes a final decision on the application are:

- (1) Minimum-(1) day.
- (2) Median-(10) days.
- (3) Maximum-(60) days.

Note: Authority cited: Section 7606, Business and Professions Code; and Section 15376, Government Code. Reference: Sections 7661 and 7663, Business and Professions Code; and Section 15376, Government Code.

History

1. Originally published 12-5-46 (Title 16).
2. Amendment filed 11-4-47 as an emergency (Register 10, No. 2).
3. Amendment filed 12-7-65; effective thirtieth day thereafter (Register 65, No. 24).
4. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).

**§ 1226. Record of Changes in Apprenticeship** [Repealer filed 7-3-86]

**§ 1227. Leave of Absence by Apprentice** [Repealer filed 7-3-86]

**§ 1228. Completion of Apprenticeship** [Repealer filed 7-3-86]

**§ 1229. Embalming by an Apprentice**

(a) An apprentice shall embalm or assist in embalming at least the first 25 of the 100 bodies required pursuant to Section 7643(d), Article 3, Chapter 12, Division 3 of the Business and Professions Code, only under the direct supervision and in the presence of his or her designated supervising embalmer.

(b) When an apprentice embalms a body out of the presence of the embalmer under whom he or she is apprenticed, the death certificate shall not be signed by such embalmer until he or she makes a personal inspection, in the presence of the apprentice, of the body as embalmed and passes thereon.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7606, 7607, 7648, 7649 and 7660, Business and Professions Code.

History

1. Originally published 12-5-46 (Title 16).
2. Amendment filed 11-4-47 as an emergency (Register 10, No. 2).
3. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).

**§ 1230. Training Apprentices**

(a) A licensed funeral establishment may, upon approval by the Board, request to be treated in aggregate for the purpose of training apprentices pursuant to the provisions of Section 7670(b) of the Business and Professions Code under the following conditions:

- (1) the licensed funeral establishments are under common ownership;
- (2) the common owners have designated one funeral establishment as the main office as defined in Section 1204(c)(2), and;
- (3) the remaining establishments must be within a 60 mile radius of the main office.

(b) The licensed funeral establishments requesting permission from the Board to be treated in aggregate, shall make a request, in writing, on a form 21A-12 (12/96) provided by the Board. An inspection shall be scheduled and completed to ensure that

the requirements of this section and section 7670 of the Business and Professions Code have been satisfied prior to approval by the Board.

Note: Authority cited: Section 7606 and 7670, Business and Professions Code. Reference: Sections 7606, 7607, 7648, 7649, 7660, and 7670 of the Business and Professions Code.

History

1. New section filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

**Article 5. Embalmer's Licenses**

**§ 1234. Review of Embalmer's License Application; Processing Time**

(a) The Board shall inform an applicant for licensure as an embalmer, in writing, within ten (10) days whether the application is complete and accepted for filing or is deficient and what specific information is required to complete the application.

(b) The Board shall make a decision within 120 days after the date the application is deemed to be complete whether the applicant meets the requirements for licensure. "Completion of an application" means that a completed application form, together with all required information, documentation and fees, has been filed by the applicant. This period may be extended by that time necessary for retaking or rescheduling an application or if the applicant is delayed in completing any required term of apprenticeship or meeting any educational requirements.

(c) The minimum, median and maximum processing times for an application for licensure as an embalmer from the date of acceptance and filing of the initial application until the Board makes a final decision on the application are:

- (1) minimum-(90) days.
- (2) median-(105) days.
- (3) maximum-(120) days.

These processing times apply to those applicants who have completed the required term of apprenticeship and take and pass the first available licensing examination.

Note: Authority cited: Section 7606, Business and Professions Code; and Section 15376, Government Code. Reference: Section 7642, Business and Professions Code; and Section 15376, Government Code.

History

1. Amendment filed 12-7-65; effective thirtieth day thereafter (Register 65, No. 24).
2. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).

**§ 1235. Examination Prior to Completion of Apprenticeship**

Applicants for an examination for embalmer's license shall be permitted to take such examination after they have completed their embalming college course, notwithstanding

that they may not, at such time, have completed their embalming apprenticeship and in the event of passing such examination the embalmer's license shall be withheld until apprenticeship has been served in full and all other requirements of the law complied with.

History

1. Originally published 12-5-46 (Title 16).
2. Amendment filed 11-4-47 (Register 10, No. 2).

**§ 1236. Approval of Embalming Schools** [Repealer filed 7-3-86]

**§ 1237. Conduct of Examination** [Repealer filed 7-3-86]

**§ 1238. Same: Applicant to Furnish Pen and Ink** [Repealer filed 7-3-86]

**§ 1239. Smoking in Examination Room Prohibited** [Repealer filed 7-3-86]

**Article 5.5 Citations, Fines and Orders of Abatement**

**§ 1240. Issuance of Citations; Content**

(a) The board is authorized to issue citations containing orders of abatement and assessing administrative fines for violations by any licensee of the board of any provision of the Funeral Directors and Embalmers Law or of any regulation adopted by the board, as specified in Section 1241 of this article.

(b) Each citation shall be in writing and shall describe with particularity the nature of the violation, including reference to the statute or regulation alleged to have been violated. Each citation shall contain a statement informing the cited person or entity of his, her or its right to contest the citation and to request a hearing pursuant to subdivision (b)(4) of Business and Professions Code Section 125.9, and Section 1245 of this code. Each citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both an administrative fine and an order of abatement. Each citation shall be served in accordance with the provisions of Section 11505(c) of the Government Code.

(d) If a hearing is not requested pursuant to subdivision (b)(4) of Business and Professions Code Section 125.9, and Section 1245 of this code, payment of any fine shall not constitute an admission of the violation charged.

Note: Authority cited: Sections 125.9, 125.95, 7606 and 7740, Business and Professions Code.  
Reference: Sections 125.9 and 125.95, Business and Professions Code.

History

1. New article heading and section filed 11-13-92; operative 12-14-92 (Register 92, No. 46). For prior history, see Register 86, No. 27.

**§ 1241. Classes of Violations; Assessment of Fines**

(a) Violations of the following code sections shall be designated Class A violations, the administrative fine for which may range from one thousand one dollars (\$1,001.00) to two thousand five hundred dollars (\$2,500.00):

- (1) Business and Professions Code Section 7615, 7616 and 7617.
- (2) Business and Professions Code Section 7632.
- (3) Business and Professions Code Section 7640 and 7641.
- (4) Business and Professions Code Section 7692.
- (5) Business and Professions Code Section 7692.5.
- (6) Business and Professions Code Section 7705.
- (7) Business and Professions Code Section 7707.
- (8) Business and Professions Code Section 7737.
- (9) California Code of Regulations Section 1258.2.
- (10) California Code of Regulations Section 1262.
- (11) California Code of Regulations Section 1263(b).
- (12) California Code of Regulations Section 1268.

(b) Violations of the following code sections shall be designated Class B violations, the administrative fine for which may range from five hundred one dollars (\$501.00) to one thousand dollars (\$1,000.00):

- (1) Business and Professions Code Section 7623.
- (2) Business and Professions Code Section 7629.
- (3) Business and Professions Code Section 7635.
- (4) Business and Professions Code Section 7685.
- (5) Business and Professions Code Section 7685.1.
- (6) Business and Professions Code Section 7685.2.
- (7) Business and Professions Code Section 7685.3.
- (8) Business and Professions Code Section 7693.

(9) Business and Professions Code Sections 7694, 7695, 7696 and 7697.

(10) Business and Professions Code Section 7699.

(11) Business and Professions Code Section 7702.

(12) Business and Professions Code Section 7706.

(13) Business and Professions Code Section 7735.

(14) California Code of Regulations Section 1204.

(15) California Code of Regulations Section 1213.

(16) California Code of Regulations Section 1214.

(17) California Code of Regulations Section 1216.

(18) California Code of Regulations Section 1221.

(19) California Code of Regulations Section 1223.

(20) California Code of Regulations Section 1223.1.

(21) California Code of Regulations Section 1229.

(22) California Code of Regulations Section 1258.1.

(23) California Code of Regulations Section 1258.3.

(24) California Code of Regulations Section 1263(a).

(25) California Code of Regulations Section 1264.

(26) California Code of Regulations Section 1265.

(27) California Code of Regulations Section 1267.

(28) California Code of Regulations Section 1275.

(c) Violations of the following code sections shall be designated Class C violations, the administrative fine for which may range from one hundred dollars (\$100.00) to five hundred dollars (\$500.00):

(1) Business and Professions Code Section 7628.

(2) Business and Professions Code Section 7633.

- (3) Business and Professions Code Section 7665.
- (4) Business and Professions Code Section 7668.
- (5) Business and Professions Code Section 7670.
- (6) Business and Professions Code Section 7680.
- (7) Business and Professions Code Section 7700.
- (8) Business and Professions Code Sections 7701 and 7701.5.
- (9) Business and Professions Code Section 7704.
- (10) California Code of Regulations Section 1203.
- (11) California Code of Regulations Section 1209.
- (12) California Code of Regulations Section 1211.
- (13) California Code of Regulations Section 1215.
- (14) California Code of Regulations Sections 1255 and 1256.
- (15) California Code of Regulations Section 1258.
- (16) California Code of Regulations Section 1269.
- (17) California Code of Regulations Section 1271.

(d) In assessing an administrative fine, or in issuing an order of abatement, the following factors shall be given due consideration:

- (1) The gravity of the violation.
- (2) The good or bad faith of the cited person or entity.
- (3) The history of previous violations.
- (4) Evidence that the violation was or was not willful.
- (5) The extent to which the cited person or entity has cooperated with the board's investigation.
- (6) The extent to which the cited person or entity has mitigated or attempted to mitigate any damage or injury caused by the violation.
- (7) Such other matters as may be proper.

Note: Authority cited: Sections 125.9, 125.95, 7606 and 7740, Business and Professions Code.  
Reference: Section 125.9, Business and Professions Code.

History

1. New section filed 11-13-92; operative 12-14-92 (Register 92, No. 46). For prior history, see Register 86, No. 27.
2. New subsections (a)(9)-(10), (b)(6), and (b)(17)-(18), subsection renumbering and amendment of Note filed 7-10-95, operative 8-9-95 (Register 95, No. 28).
3. New subsections (b)(3), (b)(14)-(15) and (b)(19)-(20), subsection renumbering, and repealer of subsections (c)(13)-(14) and (c)(16) and subsection renumbering filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

**§ 1242. Order of Abatement; Extension of Time**

If a cited person or entity who has been issued an order of abatement is unable to complete the correction within the time specific in the citation because of conditions beyond his, her or its control after exercise of reasonable diligence, the person or entity cited may request an extension of time in which to complete the correction. Such a request shall be in writing.

Note: Authority cited: Sections 125.9, 125.95, 7606 and 7740, Business and Professions Code.  
Reference: Sections 125.9 and 125.95, Business and Professions Code.

History

1. New section filed 11-13-92; operative 12-14-92 (Register 92, No. 46). For prior history, see Register 86, No. 27.

**§ 1243. Assessment of Fine; Failure to Pay**

When a citation containing an assessment of an administrative fine is not contested or if the citation and fine is contested and the licensee cited does not prevail, failure of the licensee to pay the fine within 30 days of the issuance or affirmation shall constitute a violation and may result in disciplinary action being taken by the board. When a citation is not contested and a fine is not paid, the full amount of the fine shall be added to the fee for renewal of the license and the license shall not be renewed without payment of the renewal fee and fine.

Note: Authority cited: Sections 125.9, 125.95, 7606 and 7740, Business and Professions Code.  
Reference: Sections 125.9 and 125.95, Business and Professions Code.

History

1. New section filed 11-13-92; operative 12-14-92 (Register 92, No. 46). For prior history, see Register 86, No. 27.

**§ 1244. Appeal of Citation**

(a) Any person or entity served with a citation pursuant to this article and Section 125.9 and 125.95 of the Business and Professions Code may contest the citation by filing with the board, within 30 days of the date of issuance of the citation, a written request for a hearing. All hearings under this section shall be conducted in accordance

with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The cited person or entity may contest any or all of the following aspects of the citation:

(1) The occurrence of a violation of the Funeral Directors and Embalmers Law or of a regulation adopted by the board.

(2) The reasonableness of the order of abatement, if an order of abatement is included in the citation.

(3) The reasonableness of the period of time allowed for correction in an order of abatement, if an order of abatement is included in the citation.

(4) The amount of the fine, if a fine is included in the citation.

(b) Failure of a cited person or entity to appear at the time and location of the requested hearing shall be deemed a withdrawal of his, her or its appeal, and the citation shall constitute a final order of the board and shall not be subject to appeal or review.

Note: Authority cited: Sections 125.9, 125.95, 7606 and 7740, Business and Professions Code.  
Reference: Sections 125.9 and 125.95, Business and Professions Code.

History

1. New section filed 11-13-92; operative 12-14-92 (Register 92, No. 46). For prior history, see Register 86, No. 27.

**§ 1245. Informal Office Conference**

(a) Without waiving his, her or its right to contest the citation pursuant to subdivision (b)(4) of Business and Professions Code Section 125.9, and Section 1244 of this code, the cited person or entity may, within ten (10) days after service of the citation, notify the board in writing of his, her or its request for an informal office conference regarding the violations charged in the citation.

(b) An informal office conference shall be held with the cited person or entity or his, her or its legal counsel or authorized representative, within 30 days of receipt of the request. After conclusion of the informal office conference, the citation may be affirmed, modified or dismissed. The cited person or entity shall be notified of the actions taken, in writing, within 15 days of the conclusion of the conference, stating the reasons for the actions, the findings, and the decision. This written notification shall be served in accordance with the provisions of Section 11505(c) of the Government Code. This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) The person or entity cited does not waive his, her or its right to contest the citation pursuant to subdivision (b)(4) of Business and Professions Code Section 125.9, and Section 1245 of this code, by requesting an informal office conference after which the citation is affirmed. However, if the citation is dismissed after an informal office

conference, any request for a hearing on the matter shall be deemed to be withdrawn. If the citation, including any fine levied or any order of abatement issued, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for a subsequent citation, it shall be requested in accordance with subdivision (b)(4) of Business and Professions Code Section 125.9 and Section 1245 of this code.

Note: Authority cited: Sections 125.9, 125.95, 7606 and 7740, Business and Professions Code.  
Reference: Sections 125.9 and 125.95, Business and Professions Code.

History

1. New section filed 11-13-92; operative 12-14-92 (Register 92, No. 46). For prior history, see Register 86, No. 27.

**§ 1246. Citations; Unlicensed Activity**

The board is authorized to issue citations containing orders of abatement and assessing administrative fines against unlicensed persons, partnerships, corporations, associations or other organizations who engage in any activity including advertising for which licensure is required as a funeral establishment, funeral director, embalmer or an apprentice embalmer under the Funeral Directors and Embalmers Law. The citation may include a fine for such unlicensed activity which may range from one thousand one dollars (\$1,001.00) to two thousand five hundred dollars (\$2,500.00). The provisions of Sections 125.9 of the Business and Professions Code shall apply to the issuance of citations for unlicensed activity under this section. The sanctions authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

Note: Authority cited: Sections 125.9, 125.95 and 7606, Business and Professions Code. Reference: Sections 125.9 and 125.95, Business and Professions Code.

History

1. New section filed 11-13-92; operative 12-14-92 (Register 92, No. 46).
2. Change without regulatory effect amending section filed 4-15-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 16).

**Article 6. Procedure Before the Board**

**§ 1248. Calendar of Cases** [Repealer filed 7-3-86]

**§ 1249. Hearings to Be Public** [Repealer filed 11-14-57]

**§ 1250. Reinstatement of Licenses** [Repealer filed 7-3-86]

**§ 1251. Proof of Law Violation** [Repealer filed 7-3-86]

**§ 1252. Substantial Relationship Criteria**

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed funeral establishment, licensed funeral director, or licensed embalmer if to a substantial degree it evidences present or potential unfitness of a licensed funeral establishment, licensed funeral director, or licensed embalmer to

perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Conviction of a crime involving fiscal dishonesty.

(b) Any violation of the provisions of Chapter 12, Division 3 of the Business and Professions Code.

Note: Authority cited: Sections 482, 492 and 7606, Business and Professions Code.

**History**

1. New section filed 3-22-73 as an emergency; effective upon filing (Register 73, No. 12).
2. Certificate of Compliance filed 5-25-73 (Register 73, No. 21).
3. Repealer and new section filed 2-11-75 as an emergency; effective upon filing. Certificate of Compliance included (Register 75, No. 7).
4. Amendment of first paragraph and Note filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

**§ 1253. Criteria for Rehabilitation**

When considering the denial of a license under Section 480 of the Business and Professions Code, the Board, in evaluating the rehabilitation of the applicant and his present eligibility for a license, will consider the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(d) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(e) Evidence, if any, of rehabilitation submitted by the applicant.

Note: Authority cited: Sections 488, 492 and 7606, Business and Professions Code.

**History**

1. New section filed 3-22-73 as an emergency; effective upon filing (Register 73, No. 12).
2. Certificate of Compliance filed 5-25-73 (Register 73, No. 21).
3. Repealer and new section filed 2-11-75 as an emergency; effective upon filing. Certificate of Compliance included (Register 75, No. 7).

**§ 1253.5. Rehabilitation Criteria for Suspensions or Revocations**

(a) When considering the suspension or revocation of a license on the ground that a licensed funeral establishment, licensed funeral director, or licensed embalmer has

been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

(b) **Petition for Reinstatement.** When considering a petition for reinstatement of a license under the provisions of Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in Section 1253 of this article.

Note: Authority cited: Sections 7606 and 7740, Business and Professions Code. Reference: Sections 480, 7615, 7616, 7691, 7711, 7735, 7736, 7737 and 7738, Business and Professions Code.

**History**

1. New section filed 2-11-75 as an emergency; effective upon filing. Certificate of Compliance included (Register 75, No. 7).
2. Amendment of subsection (a) filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

**§ 1253.6. Disciplinary Guidelines**

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et. seq.), the board shall consider the disciplinary guidelines entitled “A Manual of Disciplinary Guidelines for Funeral Establishments, Funeral Directors, Embalmers, and Apprentice Embalmers (September 1997)” which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation—for example, the presence of mitigating factors; the age of the case; evidentiary problems.

Note: Authority cited: Section 7606, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 11400.20 and 11425.50(e), Government Code.

**History**

1. New section filed 7-20-98; operative 8-19-98 (Register 98, No. 30).

**Article 7. Miscellaneous**

**§ 1254. Abandonment of Applications**

If an applicant for licensure as an embalmer or funeral director fails to take a required examination within one year after being notified of eligibility, the application for licensure and/or examination shall be considered to have been abandoned. An application subsequent to the abandonment of a previous application shall be considered a new application and must be accompanied by the required fee.

If an applicant for licensure as an embalmer or funeral director who has taken and passed an examination after January 1, 1997, fails to apply for licensure within 12 months of passing the examination, the application and examination results shall be considered to have been abandoned. An application subsequent to the abandonment of a previous application and/or examination shall be considered a new application and must be accompanied by the required fees. Apprentice Embalmers are exempt from this provision pursuant to Section 7664 of the Business and Professions Code.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7620, 7622, 7642 and 7646, Business and Professions Code.

History

1. Repealer of former Section 1254, and renumbering and amendment of former Section 1245 to Section 1254 filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27). For prior history, see Register 65, No. 24. and 7740, Business and Professions Code.

2. New second paragraph filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

## **§ 1255. Posting Rules**

A placard upon which Section 1221 of these rules shall be printed must be fastened to the outside of all doors leading directly into the preparation, embalming, and storage rooms in every funeral establishment.

Note: Authority cited: Section 7606. Reference: Sections 7606, 7615, 7616, 7640, 7641, 7704, and 7707, Business and Professions Code, and Section 7100, Health and Safety Code.

History

1. Amendment of section and new Note filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

## **§ 1256. Failure to Comply with Section 1255**

Any licensed funeral establishment or licensed funeral director failing to comply with the provisions of Section 1255 shall be subject to disciplinary action by the Board.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7704 and 7707, Business and Professions Code.

History

1. Amendment of section and new Note filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

## **§ 1257. Schedule of Fees**

Pursuant to the provisions of Section 7729 of Division 3, Chapter 12, Article 8, of the Business and Professions Code, fees are hereby fixed according to the following schedule:

(a) The application fee for a funeral director's license is two hundred dollars (\$200.00).

(b) The application fee for a funeral establishment license is four hundred dollars (\$400.00).

(c) The application fee for change of location of a funeral establishment's license is two hundred fifty dollars (\$250.00).

(d) The application fee for permission to assign a funeral establishment's license is three hundred dollars (\$300.00).

(e) The license renewal fee payable by a licensed funeral director is two hundred dollars (\$200.00). The fee for a delinquent renewal of a funeral director's license is three hundred dollars (\$300.00).

(f) The license renewal fee payable by a licensed funeral establishment is four hundred dollars (\$400.00). The fee for a delinquent renewal of a funeral establishment license is six hundred dollars (\$600.00).

(g) The application fee for an embalmers license and for the license examination is one hundred fifty dollars (\$150.00).

(h) The renewal fee payable by a licensed embalmer is one hundred dollars (\$100.00). The fee for a delinquent renewal of an embalmer's license is one hundred fifty dollars (\$150.00).

(i) The application fee for a certificate of registration as an apprentice embalmer is sixty dollars (\$60.00).

(j) The fee for an application by a funeral establishment for approval to train apprentice embalmers and for renewal of that approval is one hundred dollars (\$100.00).

(k) The application fee for a funeral director's examination is one hundred dollars (\$100.00).

(l) The fee for a timely filing of an individual report or a combined report on preneed trust funds, as specified, is two hundred dollars (\$200.00). The fee for a late filing of any report on preneed trust funds is three hundred dollars (\$300.00).

(m) The application fee for permission to change the name appearing on a funeral establishment's license is two hundred dollars (\$200.00). The fee for permission to change the name appearing on any other license or certificate is forty dollars (\$40.00).

(n) The application fee for a duplicate funeral director's license, a duplicate funeral establishment's license, a duplicate embalmer's license, or a duplicate certificate of registration as an apprentice embalmer, is forty dollars (\$40.00).

(o) The fee for filing a report of a change of corporate officers, designated managing funeral director, or preneed trust fund trustees, is fifty dollars (\$50.00).

Note: Authority cited: Sections 7606 and 7729, Business and Professions Code. Reference: Sections 7618, 7622.5, 7628, 7630, 7642, 7661, 7670, 7725, 7725.2, 7725.5, 7729 and 7740.5, Business and Professions Code.

History

1. New section filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49). For former history, see Register 69, No. 6.
2. Repealer and new section filed 12-19-91; operative 12-19-91 (Register 92, No. 11).
3. Amendment filed 12-30-96 as an emergency; operative 1-1-97 (Register 97, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-1-97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-30-96 order, including additional amendment of subsections (l) and (o), transmitted to OAL 4-25-97 and filed 6-5-97 (Register 97, No. 23).

**§ 1258. Notice Regarding Sealing Device**

(a) There shall be prominently displayed in or on each casket having or represented as having a sealing device of any kind, a notice, clearly visible to the public, containing the following statement:

**"THERE IS NO SCIENTIFIC OR OTHER EVIDENCE THAT ANY CASKET WITH A SEALING DEVICE WILL PRESERVE HUMAN REMAINS."**

The statement shall be printed in at least ten point, boldface type on a card of no less than three inches by five inches in dimension and no other notice, statement, price, information, picture or other printing, other than borders or decorations, shall appear on the card. The print shall be in a color that contrasts with the background on which it is printed. If the card is folded in any manner, the section containing the statement shall be no less than three inches by five inches in dimension and unfolded.

(b) In cases where caskets are displayed in or sold from catalogues, the notice required in Subsection (a) above shall appear on a page at the beginning of any such catalogue containing such casket or caskets. The notice shall be in ten point boldface type or larger and no other notice, statement, price, information, picture or other printing, other than borders or decorations, shall appear on the page.

(c) The notice required in Subsection (a) above shall also be placed in 8-point boldface type or larger at the beginning of the written statement or list which identifies a particular casket or caskets by price required by Business and Professions Code Section 7685.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Section 7606, Business and Professions Code.

History

1. New section filed 2-15-80; effective thirtieth day thereafter (Register 80, No. 7).
2. Designation and amendment of subsection (a) and new subsections (b)-(c) filed 7-10-95; operative 8-9-95 (Register 95, No. 28).
3. Amendment of subsection (a) filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

**§ 1258.1. Casket Price Lists, Price Tags, Price Ranges and Display**

(a) For the purposes of Business and Professions Code Section 7685 and this section, the term “provide” shall mean to give for retention to persons who inquire in person about funeral arrangements or the prices of funeral goods or services.

(b) For the purposes of Business and Professions Code Sections 7685 and 7685.1(a), casket descriptions shall be sufficiently descriptive so as to provide a reasonably accurate impression of the casket including its color. The color may be expressed in either the manufacturer's color or generic color. The color description of wood caskets shall specify whether the finish is dark, medium or light.

(c) The statement regarding the price range for all caskets offered for sale, required pursuant to Business and Professions Code Section 7685, shall:

(1) Differentiate between the price range for adult caskets, the price range for infant and child caskets, the price range for rental caskets, and the price range for alternative containers.

(2) Include all caskets that are regularly offered for sale.

(d) The price range required by (c)(1) above shall be restated at the beginning of the casket price list required by Business and Professions Code Section 7685.

(e) All caskets and alternative containers regularly offered for sale shall be either physically displayed in the funeral establishment casket selection room or displayed photographically.

(f) The provisions of Business and Professions Code Section 7685.1(a) shall be applicable to caskets regularly offered for sale and displayed by catalog, by photograph and physically.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7606, 7685 and 7685.1, Business and Professions Code.

History

1. New section filed 7-10-95; operative 8-9-95 (Register 95, No. 28).
2. Amendment of subsection (e) filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

**§ 1258.2. Rental Caskets**

(a) A rental casket is a specially designed device used to conceal a rental casket insert containing human remains, for purposes of viewing and/or funeral or other ceremony, and may give the outward appearance of being a casket. No part of a rental casket, including its lining, shall come into contact with any human remains placed therein or placed within a rental casket insert placed therein, unless that part or lining is disposed of with the rental casket insert and human remains.

(b) For the purposes of Business and Professions Code section 7702, a casket is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

(c) A rental casket insert is an enclosure without ornamentation which has an interior lining and which is designed for the encasement of human remains for burial, cremation, or transit.

(d) The provisions of Business and Professions Code section 7702 shall not be applicable to rental caskets, as described and defined in subsection (a) of this section, if the purchaser/renter is notified in writing prior to entering into any agreement that the rental casket is designed to be reused and may have previously been used and if the purchaser/renter does not object to the previous use and/or reuse. The purchaser/renter shall acknowledge the notification and express agreement in writing.

(e) A new rental casket insert shall be used for each human remains displayed in a rental casket.

(f) No rental casket shall be used or reused after it has been soiled, stained or otherwise contaminated by or from any human remains placed therein or placed within a rental casket insert placed therein.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7606 and 7702, Business and Professions Code.

History

1. New section filed 7-10-95; operative 8-9-95 (Register 95, No. 28).

### **§ 1258.3. Cemetery Board Notification**

The statement required by Business and Professions Code section 9662 shall be printed on the first page of any contract for funeral goods and services offered by a funeral establishment which contains charges for both funeral goods and services and cemetery or crematory goods and services.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Section 7606, Business and Professions Code.

History

1. New section filed 7-10-95; operative 8-9-95 (Register 95, No. 28).
2. Amendment of first paragraph and repealer of second paragraph filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

#### **§ 1258.4. Statement of Disclosure of Preneed Agreement**

The statement on the general price list required by Business and Professions Code Section 7685(b) shall be made on the first page of the list, and shall be separate and apart from any other information on the list, and shall state:

“Prior to drafting any contract for goods or services, the responsible party or the decedent’s survivor who is handling the funeral arrangements is entitled to receive a copy of any preneed agreement in the possession of the funeral establishment that has been signed and paid for, in full or in part, by or on behalf of the decedent.”

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7606, 7685 and 7745, Business and Professions Code.

History

1. New Section filed 5-13-2004; operative 6-12-2004 (Register 2004, No. 20).

#### **§ 1259. License Expiration and Renewal Dates**

(a) On and after January 1, 1992, all renewable licenses issued under Chapter 12 of Division 3 of the Business and Professions Code, shall expire annually on the last day of the month in which the license was originally issued, if not renewed.

(b) Any licensee who has renewed a license for the 1991 license year shall be required to renew that license for not less than seven (7) months nor more than eighteen (18) months based on its next expiration date under subsection (a). For the purpose of license renewal under this subsection, the applicable renewal fee shall be prorated on a monthly basis and one twelfth of the applicable fee shall be payable for each month or any portion of a month.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 152.6, 7606, 7725, 7725.2, 7725.3, 7725.4, 7725.5 and 7729, Business and Professions Code.

History

1. New section filed 9-66-66; effective thirtieth day thereafter (Register 66, No. 31).
2. Repealer filed 2-5-69; effective thirtieth day thereafter (Register 69, No. 6).
3. New section filed 12-19-91; operative 12-19-91 pursuant to Government Code section 11346.2(d) (Register 92, No. 11).

### **Article 8. Preneed Funds and Disclosure of Preneed Agreement**

#### **§ 1261. Exempt Preneed Arrangements**

A pre--need arrangement, contract or plan subject to the provisions of Business and Professions Code Division 3, Chapter 12, Article 9 (the Short Act) does not include an arrangement wherein:

(a) The funeral establishment’s client directly deposits his or her own money in a bank or savings institution trust account in the name of the client as trustee for the

funeral establishment, provided that, until death, the client retains the exclusive power to hold, manage, pledge, and invest the funds in the account and may revoke the tentative trust and withdraw the funds, in whole or in part, at any time; and

(b) There is no delivery whatsoever to the funeral establishment of money to pay for the services or merchandise, until such services or merchandise have been provided.

Delivery of money to a funeral establishment within the meaning of this rule and Business and Professions Code Section 7735 includes direct or indirect delivery to the funeral establishment, or to any of the funeral establishment's agents or employees.

Note: Authority cited: Sections 7606 and 7740, Business and Professions Code. Reference: Sections 7735 and 7740, Business and Professions Code.

History

1. New NOTE filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25). For prior history, see Register 77, No. 9.
2. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).
3. Change without regulatory effect amending article heading, section heading and section filed 4-15-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 16).

**§ 1262. Delivery of Merchandise**

(a) Delivery of merchandise within the meaning of Business and Professions Code Section 7741 shall mean actual personal delivery to a purchaser, trustor or beneficiary of funeral merchandise that is used or is intended to be used in connection with a preneed arrangement or any agreement collateral thereto. Any payment or payments received for funeral merchandise, where actual personal delivery of that merchandise will be delayed, shall be held in a trust as provided in Business and Professions Code, Division 3, Chapter 12, Article 9, until that merchandise is actually and personally delivered to, and is in the immediate possession of, the purchaser.

(b) Neither the delivery of a warehouse receipt, nor any other form of constructive delivery shall constitute delivery of funeral merchandise within the meaning of Section 7741.

(c) Funeral merchandise includes, but is not limited to, caskets, alternative containers, clothing, printed materials and any other merchandise usually sold by a funeral establishment for use in connection with the funeral or preparation for disposition of human remains.

Note: Authority cited: Sections 7606 and 7740, Business and Professions Code. Reference: Sections 7606, 7735, 7740 and 7741, Business and Professions Code.

History

1. Amendment and renumbering as Section 1270 and new section filed 2-25-72; effective thirtieth day thereafter (Register 72, No. 9).
2. Repealer filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).
3. New section filed 7-10-95; operative 8-9-95 (Register 95, No. 28).
4. Change without regulatory effect amending subsection (c) filed 4-15-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 16).

### **§ 1263. Investment of Funds Allowable**

(a) The trust funds shall be invested and reinvested, and kept invested in:

(1) Bonds of or securities guaranteed by the United States or an Agency thereof or this State, or of any County, City, or City and County in this State.

(2) Bonds which are legal investments for commercial banks in this State.

(3) Certificates of deposit or other interest-bearing accounts in any bank in this State insured by the Federal Deposit Insurance Corporation.

(4) Investment certificates or shares in any state or federally chartered savings institution insured by the Federal Savings and Loan Insurance Corporation.

(5) Investments of the type and in the manner as provided in Section 15001 et seq. of the Probate Code.

(b) No loan shall be made to any licensed funeral establishment; nor to any owner, director, officer, partner or stockholder of any licensed funeral establishment; or to trustees of the trust funds; or to partners, relatives, agents, or employees of any licensed funeral establishment or of such trustees.

Note: Specific reference: Sections 7735, 7737 and 7737.5, Business and Professions Code.

#### **History**

1. Renumbering from Section 1266 filed 2-25-72; effective thirtieth day thereafter (Register 72, No. 9).
2. Amendment filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).
3. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).
4. Change without regulatory effect amending subsections (a)(4), (a)(5) and (b) filed 4-15-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 16).

### **§ 1264. Termination of the Trust**

All written requests for revocation, by the trustor, of a trust shall be honored within fifteen (15) days of receipt thereof.

Note: Authority cited: Sections 7606 and 7740, Business and Professions Code. Reference: Sections 7735 and 7737, Business and Professions Code.

#### **History**

1. Amendment and renumbering as Section 1272 and new section filed 2-25-72; effective thirtieth day thereafter (Register 72, No. 9).
2. Amendment filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).
3. Amendment filed 4-3-86; effective thirtieth day thereafter (Register 86, No. 27).

### **§ 1265. Use of Income**

The annual fee for administering a trust, as provided in Business and Professions Code, Division 3, Chapter 12, Article 9, Section 7735, may be recovered by withdrawals

from current trust income, but total withdrawals in any year shall not exceed four percent (4%) of the trust balance on December 31 of that year, or on the cancellation or maturity date during that year, of all payments deposited into trust, plus all prior years accumulated income. Any remaining current income shall be accumulated in trust.

Note: Authority cited: Sections 7606 and 7740, Business and Professions Code. Reference: Sections 7735 and 7740, Business and Professions Code.

History

1. Amendment and renumbering as Section 1267 and new section filed 2-25-72; effective thirtieth day thereafter (Register 72, No. 9).
2. Amendment filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).
3. Amendment filed 10-5-81; effective thirtieth day thereafter (Register 81, No. 41).
4. Amendment filed 1-12-90; operative 2-11-90 (Register 90, No. 3).

**§ 1266. Use of Income upon Revocation** [Repealer filed 7-3-86]

**§ 1267. Keeping of Preneed Books, Accounts, Contracts, and Records.**

Each funeral establishment charged with the reporting of preneed funds hereunder shall at all times maintain or cause the trustee of the preneed trust to maintain in California and available for inspection by the Board during reasonable working hours, complete financial records of all preneed contracts and arrangements, which records shall be established and maintained in accordance with generally accepted accounting principles. Such records shall include the following, provided, however, that records may otherwise be established and maintained in accordance with generally accepted accounting principles:

- (a) An individual trustor contract, plan or agreement.
- (b) An individual trustor or beneficiary ledger account which shall set forth the amount of the contract, all payments received, all income prorated in accordance with the ratio which the trust corpus of the account bears to the entire corpus invested as set forth in Section 1265.
- (c) A cash receipts journal which shall show each payment received and shall be totaled monthly.
- (d) A cash disbursement journal which will show each withdrawal for an investment in compliance with 1263 and each disbursement to the funeral establishment for a serviced account or to the individual trustor on a canceled account, and all withdrawals for documented expenses.
- (e) In the case where a checking account is used to deposit payments received or disbursements to the funeral establishment and/or the funeral director, a trustor or an investment, it shall be designated as a trust fund account, and be reported as such. It shall be reconciled each month with the balance shown in the trust account by accounting for checks not yet presented and outstanding, bank deposits not shown on the bank statements, and other adjustments required.

(f) A general ledger which shall be posted monthly with respect to all accounts controlling the fiduciary relationship with the individual trusters. Such postings shall occur within 90 days after the close of each business month.

(g) A portfolio of all investments related to the trust funds.

(h) Records for serviced accounts shall include but not be limited to:

(1) A copy of the death certificate or other satisfactory evidence of the death; copies of all documents required as specified under Sections 7685 and 7685.2, Division 3, Chapter 12, Article 5.5 of the Business and Professions Code; a copy of the final arrangements (itemized); and a copy of the final statement to the family.

(2) All monies received from the trust; all monies received from the family; and all monies received from the Veterans Administration or Social Security or any other source to be applied to the final bill.

(3) A record showing credit for each of the above.

(i) Records for canceled accounts shall include but not be limited to:

(1) A record of all income earned and documented expenses taken including a revocation fee as stated in Section 7735, Division 3, Chapter 12, Article 9, of the Business and Professions Code.

(2) A copy of the final accounting to the family with the canceled check or withdrawal slip showing the amount refunded to the trustor.

(j) All of the foregoing records shall be retained for a period of one year after the account has been canceled or serviced and audited by the State Board and compliance with all recommendations made and audit exceptions resolved or 7 years from the date of service or cancellation, whichever comes first.

The required books and records for more than one licensed funeral establishment may be centrally maintained at a single location in California with notification to the Board or the main office as defined in Section 1204(c)(2), provided that a monthly summary of all financial transactions pertaining to each individual trust account for each licensed funeral establishment is available, at each such establishment during reasonable working hours, to the Board or its authorized representatives; and provides further that the monthly summary contains sufficient information from which the current balance of each individual trustor's account or each individual trustor's share of any commingled trust account may be identified.

Note: Authority cited: Sections 7606 and 7740, Business and Professions Code. Reference: Sections 7735, 7737 and 7740, Business and Professions Code.

History

1. Amendment filed 7-3-80; effective thirtieth day thereafter (Register 80, No. 27). For prior history, see Register 72, No. 9; and 77, No. 25.
2. Amendment file 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).
3. Amendment of first paragraph, subsections (d) and (e), and last paragraph filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

### **§ 1268. Commingling of Funds**

No preneed trust funds shall be mingled or commingled with the funds of any other person, firm, or corporation; except that, for the purpose of investment pursuant to Division 3, Chapter 12, Article 9 of the Business and Professions Code and the provisions of this Article, all preneed funeral trust funds received and held by a single trustee or a single set of trustees, may be commingled for investment purposes.

If the Board finds that such funds have been invested in violation of this Article, it shall, by written order mailed to the person or persons in charge of such funds, require the reinvestment of such funds in conformity to this Article within 90 days from the date of such order; provided, however, that such period may be extended by the Board at its discretion.

In the enforcement of its order, the Board is authorized to bring such action as may be necessary to enforce the provisions of law subject to its jurisdiction.

Note: Authority cited: Sections 7606 and 7740, Business and Professions Code. Reference: Sections 7735 and 7740, Business and Professions Code.

#### **History**

1. Amendment and renumbering of former Section 1265 filed 2-25-72; effective thirtieth day thereafter (Register 72, No. 9).
2. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).

### **§ 1269. Reporting of Preneed Funeral Trust Funds**

(a) Each licensed funeral establishment and licensed funeral director who enters into any preneed arrangements, contracts or plans described in and subject to the provisions of Article 9, Chapter 12, Division 3 of the Business and Professions Code shall file with the Board annually on or before May 1 of each year and upon transfer of license or cessation of business, a written, verified or audited report, on form 21P-4A (1/94) prescribed and furnished by the Board, pertaining to funds received and held under such arrangements, contracts or plans. Firms utilizing a fiscal year accounting system may request permission, in writing to the Executive Officer, to file said report on a fiscal year basis and, if permission is granted, said report shall then be filed with the Board no later than 120 days from the date of the close of said fiscal year.

(b) The report required under this Article shall accompany the forms of assignment or transfer of a funeral establishment license. The report required hereunder upon cessation of business as a licensed funeral establishment shall be submitted thirty (30) days prior to such cessation of business.

(c) In cases where trust corpus is deposited in individual savings accounts, and not commingled for investment purposes, the Board may require a verified report. Said requirement of verification shall be deemed complied with by a verification under penalty of perjury by the owner, partners, or, in the case of a corporation, by the president or vice-president and one other officer thereof and, in addition thereto, all reports must contain a verification under penalty of perjury executed by at least two (2) trustees not employed by the funeral establishment and, in the case of a banking institution or trust company legally authorized to act as a trustee within the meaning of Section 7736 of Article 9, Chapter 12, Division 3, of the Business and Professions Code, a verification under penalty of perjury on behalf of such trustee by an authorized representative of said trustee.

(d) In cases where trust funds have been commingled for purposes of investment, the Board may require, in addition to the written report required by subsection (a) of this section, an independent audit report prepared and signed by a Certified Public Accountant or Public Accountant, currently licensed in the State of California, which certifies compliance with the provisions of Article 9, Chapter 12, Division 3 of the Business and Professions Code and the provisions of this Article.

(e) All written reports required under this section shall include, but are not limited to, a statement setting forth:

(1) Amounts collected pursuant to preneed arrangements, contracts or plans, or any agreements collateral thereto;

(2) Amounts deposited with the trustee and held in trust;

(3) Amounts of authorized expenditures of income allocable to individual accounts, itemized as to the nature of expenditures;

(4) Amount of authorized expenditures of income paid, itemized as to the nature of expenditure; and

(5) Separately, the total amount of such trust funds invested in each of the investments authorized by law and the amount of cash on hand not invested which statement actually show the financial condition of the trust funds.

(f) Two or more funeral establishments who utilize a common trust fund to hold and administer payments received under preneed contracts may cause the trustee of that common trust fund to file one combined annual report regarding all such preneed contracts, provided each funeral establishment's information is disclosed separately.

Note: Authority cited: Sections 7606 and 7740, Business and Professions Code. Reference: Sections 7735, 7738, 7740 and 7740.5, Business and Professions Code.

History

1. Amendment and renumbering of former Section 1261 filed 2-25-72; effective thirtieth day thereafter (Register 72, No. 9).

2. Amendment filed 2-11-75 as an emergency; effective upon filing. Certificate of Compliance included (Register 75, No. 7).
3. Amendment filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).
4. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).
5. Amendment of subsections (a), (b), (c) and (f) filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

**§ 1270. Requirements of Preneed Fund Report to Board** [Repealer filed 7-3-86]

**§ 1271. Reporting of Trustees**

The reports provided for in Section 1269 of this Article shall state the name and address of each of the trustees. Any change of trustees shall be reported to the Board within thirty (30) days after the effective date thereof and shall be accompanied by the appropriate fee.

Note: Specific reference: Sections 7736 and 7740.5, Business and Professions Code.

History

1. Amendment and renumbering from former Section 1263 filed 2-25-72; effective thirtieth day thereafter (Register 72, No. 9).
2. Amendment filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).

**§ 1272. Failure to File Required Preneed with Board** [Repealer filed 7-3-86]

**§ 1273. Application to Licensed Funeral Directors Also Licensed As a Cemetery Authority** [Repealer filed 7-3-86]

**§ 1274. Inability to Perform**

If, for any reason, a licensed funeral establishment or licensed funeral director is unable to perform the funeral services prior to or upon the death of the beneficiary of a preneed trust agreement, then the trustees shall pay all trust corpus and net income to the beneficiary, trustor or the legal representative of either the beneficiary or trustor without the imposition of any revocation charge.

Note: Authority cited: Sections 7606 and 7740, Business and Professions Code. Reference: Sections 7737 and 7740, Business and Professions Code.

History

1. Renumbering from Section 1267 filed 2-25-72; effective thirtieth day thereafter (Register 72, No. 9).
2. Repealer and new section filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).
3. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).
4. Amendment filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

**§ 1275. Requirements of Preneed Trust Agreements**

A preneed trust contract within the meaning of Article 9, Chapter 12, Division 3, of the Business and Professions Code shall include but not be limited to the following information:

- (a) The name and address of the trustor.
- (b) The name and address of the beneficiary.
- (c) The names and addresses of the trustees.
- (d) The name, address and phone number of the funeral establishment.
- (e) A sequential number which shall be continuous and in order of issue.
- (f) A copy of the completed funeral arrangements forms including, but not limited to, the following:
  - (1) A description of the merchandise and services selected which is sufficiently detailed to identify them; and
  - (2) Any disclosure of prices or itemization of services or merchandise, which is required to be provided pursuant to State or Federal law, rule or regulation then in effect.
  - (g) A statement that earned annual income is being credited to the account and that administrative expenses, if charged, are paid from income only.
  - (h) A statement, in clear nontechnical language, that the contract is either a guaranteed preneed contract or that it is a nonguaranteed preneed contract, and, if guaranteed only in part, the services or merchandise included in the guarantee shall be specified. This statement shall be printed in bold face type and shall be located on the first page of the contract.
    - (1) If the contract is guaranteed, there shall be included in the contract a complete explanation of all the terms and conditions limiting the guarantee.
    - (2) If the contract is not guaranteed, there shall be included in the contract a complete explanation of how the trust balance will be applied to pay for services and merchandise provided at the beneficiary's death and that there may be additional payments required or a refund due.
  - (i) A statement that the trustees of the trust will deliver the corpus of the trust and net income to the funeral establishment filing a certified copy of the Death Certificate and evidence that said funeral establishment has furnished the merchandise and services. (Corpus of the Trust means all monies paid and all securities delivered pursuant to this prearrangement contract.)
  - (j) A statement that the amount of revocation fee to be charged in the event of revocation, shall in no event exceed ten percent (10%) of the paid-in corpus and is chargeable against earned income only; and a statement that no revocation fee may be charged if the funeral establishment is unable to perform substantially according to the terms of the agreement.

(k) In immediate proximity to the space reserved for the purchaser's signature, in a size equal to at least ten point (10-point) bold type, the following statement: "All funds received will be deposited with the trustees within thirty (30) days and held in a trust which is fully refundable upon fifteen (15) days' written notice except when the beneficiary is the recipient of public assistance, as provided in the Welfare and Institutions Code and this trust agreement has been designated as being irrevocable thereunder."

Note: Authority cited: Sections 7606 and 7740, Business and Professions Code. Reference: Sections 7735, 7736, 7737, 7738, 7740 and 7740.5, Business and Professions Code.

**History**

1. New section filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).
2. Amendment filed 7-3-86; effective thirtieth day thereafter (Register 86, No. 27).
3. Amendment of subsections (h) and (i) filed 1-12-90; operative 2-11-90 (Register 90, No. 3).
4. Change without regulatory effect amending section heading, first paragraph, and subsections (i) and (j) filed 4-15-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 16).

**§ 1276. Preneed Funds Affected**

Nothing in this article shall require liquidation or transmutation of any lawful preneed funeral trust agreement existing prior to the effective date of these regulations, but any preneed funeral trust agreement as described in said Article 9, entered into subsequent to July 1, 1977, and all funds and the records and books of account thereof may be maintained separately and apart from the records of any trust funds received by any licensed funeral director prior to that date.

(a) Preneed arrangements, contracts, or plans created or existing prior to July 1, 1977, shall be subject to the provisions of Section 1265, Title 16 of the California Code of Regulations, and shall operate in conformity with the provisions of Section 1265, Title 16 of the California Code of Regulations in the same manner and to the same extent as such arrangements, contracts, and plans created thereafter.

(b) No licensed funeral establishment or licensed funeral director shall service and/or purchase any contract made by any person who is not operating in conformity with the provisions of Article 9, Chapter 12, Division 3, of the California Business and Professions Code.

Note: Authority and reference cited: Sections 7606 and 7740, Business and Professions Code.

**History**

1. New section filed 6-17-77; effective thirtieth day thereafter (Register 77, No. 25).
2. Amendment filed 10-5-81; effective thirtieth day thereafter (Register 81, No. 41).
3. Amendment filed 10-31-97; operative 11-30-97 (Register 97, No. 44).

**§ 1277. Definition of Preneed Arrangement**

“Preneed arrangement,” preneed agreement” or “preneed” is written instruction regarding goods or services or both goods and services for final disposition of human remains when the goods or services are not provided until the time of death, and may be either unfunded or paid for in advance of need.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7606, 7685, 7685.6 and 7745, Business and Professions Code.

1. New Section filed 5-13-2004; operative 6-12-2004 (Register 2004, No. 20).

### **§ 1277.5. Disclosure of Preneed Funeral Agreement**

(a) The statement disclosing whether or not the funeral establishment has any preneed agreement made by or on behalf of the deceased shall be made on the “Disclosure of Preneed Funeral Agreement” form provided by the Bureau (Form 21F1 (10/03)), which is hereby incorporated by reference. The disclosure statement shall be signed and dated by the representative of the funeral establishment and by the survivor or responsible party. A copy of the completed disclosure statement shall be given to the survivor or responsible party, and the original completed disclosure statement, or copy thereof, shall be retained by the funeral establishment for not less than one (1) year after the serviced preneed account has been audited by the Bureau or seven (7) years from the date the disclosure statement was made, whichever comes first.

(b) The “survivor” is the person with the right to control disposition of the remains under Health and Safety Code Section 7100, or their designee.

(c) The “responsible party” is the person contracting for funeral goods or services or both funeral goods and services for the decedent from the funeral establishment.

(d) Pursuant to Business and Professions Code Sections 7685.6 and 7745, a copy of any signed preneed agreement made by, or on behalf of the decedent that is paid for in full or in part and is in the possession of the funeral establishment must given to the responsible party or the decedent’s survivor who is handling the funeral arrangements prior to drafting any contract for goods or services.

Note: Authority cited: Section 7606, Business and Professions Code. Reference: Sections 7606, 7685.6 and 7745, Business and Professions Code.

1. New Section filed 5-13-2004; operative 6-12-2004 (Register 2004, No. 20).

## **Article 9. Continuing Education Requirements**

**[NOTE: AB 1379, Chapter 241, Statutes of 1999, repealed Business and Professions Code §§ 7622.3 and 7651, the authority for the continuing education requirements. Therefore, Article 9, (§§ 1280.-1291) while still in the California Code of Regulations, is no longer valid.]**

## **California Code of Regulations – Cemetery Law**

### **Division 23. State Cemetery Board**

*(Originally Printed 3-4-50)*

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#### **Article 1. General**

##### **§ 2300. Location of Office**

The principal office of the Board is located at 2535 Capitol Oaks Drive, Suite 300B, Sacramento, California 95833.

Note: Authority cited: Section 9630, Business and Professions Code. Reference cited: Section 9630, Business and Professions Code.

##### **History**

1. Amendment filed 12-15-70; effective thirtieth day thereafter (Register 70, No. 51). For prior history see Register 63, No. 3.
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).
4. Change without regulatory effect amending section filed 2-8-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 6).

##### **§ 2301. Tenses, Gender and Number**

For the purpose of the rules and regulations contained in this chapter, the present tense includes the past and future tenses, and the future, the present; the masculine gender includes the feminine, and the feminine, the masculine; and the singular includes the plural, and the plural, the singular.

##### **§ 2302. Definitions**

(a) For the purpose of the rules and regulations contained in this chapter, the term “Board” means the Cemetery Board; the term “Code” means Business and Professions Code; and the term “Act” means the Cemetery Act.

(b) For the purpose of cemetery section development or modification after January 1, 1990, the term "development" means the creation of new interment spaces through the construction of a mausoleum, columbarium, or an in-ground interment section (excluding private mausoleums and/or columbariums) and the term "modification" means the addition, deletion or reconfiguration of interment spaces within an existing cemetery section, mausoleum, and/or columbarium.

Note: Authority cited: Sections 102.1 and 9630, Business and Professions Code. Reference: Section 8550(d), Health and Safety Code.

#### HISTORY

1. New subsection (a) designator, new subsection (b) and new Note filed 11-10-98; operative 12-10-98 (Register 98, No. 46).

### **§ 2303. Delegation of Certain Functions**

The power and discretion conferred by law upon the Board to receive and file accusations; issue notices of hearings, statements to respondent and statements of issue; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set calendar cases for hearing and perform other functions necessary to the businesslike dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said Code are hereby delegated to and conferred upon the Executive Officer, or, in his or her absence from the office of the Board, the acting Executive Officer.

Note: Authority cited: Section 9630, Business and Professions Code; and Section 11152, Government Code. Reference: Section 9628, Business and Professions Code.

#### History

1. Editorial correction filed 12-15-83; effective thirtieth day thereafter (Register 83, No. 51).

### **§ 2304. Filing of Addresses**

Each person holding a certificate of authority, license, permit or any other authority to practice or engage in any activity in the State of California under any and all laws administered by the Board shall file his proper and current mailing address with the Board, at its office in Sacramento and immediately notify the Board of any and all changes of mailing address, giving both his old and his new address.

## **Article 2. Fees**

### **§ 2310. Regulatory Charge**

(a) The annual regulatory charge to be paid by every cemetery authority operating a cemetery under the Act is fixed at the sum of four hundred dollars (\$400). An additional quarterly charge of eight dollars fifty cents (\$8.50) for each burial, entombment, or

inurnment made during the preceding quarter shall be paid until December 31, 2007, to the Bureau. If the cemetery authority performs a burial, entombment, or inurnment, and the cremation was performed at a crematory located on the grounds of the cemetery and under common ownership with the cemetery authority, the total of all additional charges shall be not more than eight dollars and fifty cents (\$8.50).

(b) The annual regulatory charge to be paid by every licensed crematory is fixed at the sum of four hundred dollars (\$400). An additional quarterly charge of eight dollars fifty cents (\$8.50) for each cremation made during the preceding quarter shall be paid until December 31, 2007, to the Bureau.

Note: Authority cited: Sections 9630 and 9765, Business and Professions Code. Reference cited: Sections 9765 and 9786, Business and Professions Code.

#### History

1. Amendment filed 12-26-79 as an emergency; effective upon filing (Register 79, No. 52). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 4-25-80. For prior history, see Registers 63, No. 3; 73, No. 41; 75, No. 49; and 77, No. 47.
2. Amendment filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).
3. Amendment of subsection (a) filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22).
4. Amendment of subsections (a) and (b) to reduce the amount of the charges filed 11-28-88; operative 12-31-88 (Register 88, No. 51).
5. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).
6. Amendment filed 12-30-96 as an emergency; operative 1-1-97 (Register 97, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-1-97 or emergency language will be repealed by operation of law on the following day.
7. Editorial correction of subsection (b) (Register 97, No. 24).
8. Certificate of Compliance as to 12-30-96 order, including further amendments, transmitted to OAL 4-25-97 and filed 6-9-97 (Register 97, No. 24).
9. Change without regulatory effect amending section filed 12-12-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 50).

## **§ 2311. Filing Fee**

(a) An initial filing fee of four hundred dollars (\$400) shall accompany an original application for a certificate of authority to operate a cemetery. In the event the expenses of the board's investigation, computed at the rate of \$100 per day per man, shall exceed this amount, the applicant shall, within five days after request therefor, deposit such additional sums as deemed necessary by the board provided that the total sum shall not exceed nine hundred dollars (\$900).

(b) An initial filing fee of four hundred dollars (\$400) shall accompany an original application for a crematory license. In the event the expenses of the board's investigation, computed at the rate of \$100 per day per man, shall exceed this amount, the applicant shall, within five days after request therefor, deposit such additional sums as deemed necessary by the board provided that the total sum shall not exceed nine hundred dollars (\$900).

Note: Authority cited: Sections 9630, 9717 and 9783, Business and Professions Code. Reference cited: Sections 9717 and 9783, Business and Professions Code.

History

1. New section 2311 filed 1-16-56; effective thirtieth day thereafter (Register 56, No. 2).
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).
4. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

**§ 2312. Cemetery Broker Original License Fee**

The cemetery broker original license fee shall be four hundred dollars (\$400).

Note: Authority cited: Sections 9630 and 9751, Business and Professions Code. Reference: Section 9751, Business and Professions Code.

History

1. Amendment filed 12-15-70; effective thirtieth day thereafter (Register 70, No. 51). For prior history, see Register 59, No. 7.
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22).
4. Amendment filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

**§ 2313. Cemetery Broker Re-Examination Fee**

The cemetery broker re-examination fee shall be one hundred dollars (\$100).

Note: Authority cited: Sections 9630 and 9752, Business and Professions Code. Reference: Section 9752, Business and Professions Code.

History

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

**§ 2314. Cemetery Broker License Renewal Fee**

The cemetery broker license renewal fee shall be three hundred dollars (\$300).

Note: Authority cited: Sections 9630 and 9753, Business and Professions Code. Reference: Section 9753, Business and Professions Code.

History

1. Amendment filed 12-15-70; effective thirtieth day thereafter (Register 70, No. 51). For prior history, see Register 59, No. 7.
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22).
4. Amendment filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

**§ 2315. Cemetery Broker Multiple Corporate Officer or Partner License Renewal Fee**

Pursuant to Sections 9754 and 9755 of the Business and Professions Code, the cemetery broker renewal license fee for a license issued to a second or additional

corporate officer or partner of a partnership shall be one hundred dollars for each license in addition to the first fee paid by the corporation or partnership.

Note: Authority cited: Sections 9630, 9754 and 9755, Business and Professions Code. Reference: Sections 9754 and 9755, Business and Professions Code.

History

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

**§ 2316. Cemetery Broker Branch Office License Fee**

The cemetery broker branch office license fee shall be one hundred dollars (\$100).

Note: Authority cited: Sections 9630 and 9760, Business and Professions Code. Reference: Section 9760, Business and Professions Code.

History

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

**§ 2317. Crematory Manager Examination, License, and Renewal Fee**

(a) The crematory manager examination fee and reexamination fee is four hundred and fifty dollars (\$450.00).

(b) The crematory manager license fee is eighty dollars (\$80.00).

(c) The annual renewal fee for the crematory manager license is eighty dollars (\$80.00).

Note: Authority cited: Sections 9630, Business and Professions Code. Reference: Section 9764.1 and 9787.2, Business and Professions Code.

History

1. New section filed 5-27-2003 as an emergency; operative 5-27-2003 (Register 2003, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-24-2003 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 91, No. 10.
2. Certificate of Compliance as to 5-27-2003 order transmitted to OAL 9-22-2003 and filed 11-3-2003 (Register 2003, No. 45).

**§ 2317.1 Cemetery Manager Examination, License, and Renewal Fee**

(a) The cemetery manager examination fee and reexamination fee is eight hundred dollars (\$800.00).

(b) The cemetery manager license fee is eighty dollars (\$80.00).

(c) The annual renewal fee for the cemetery manager license is eighty dollars (\$80.00).

Note: Authority cited: Sections 9630, Business and Professions Code. Reference: Section 9723 and 9764.2, Business and Professions Code.

**History**

1. New section filed 5-27-2003 as an emergency; operative 5-27-2003 (Register 2003, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-24-2003 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-27-2003 order transmitted to OAL 9-22-2003 and filed 11-3-2003 (Register 2003, No. 45).

**§ 2317.2 Fee for Report of Change of Designation of Cemetery Manager or Crematory Manager and Request to Share a Cemetery Manager**

(a) The fee for filing a report of a change of designated crematory manager, or designated cemetery manager, is fifty dollars (\$50).

(b) The fee for filing a request to share a designated cemetery manager is fifty dollars (\$50).

Note: Authority cited: Sections 9630, Business and Professions Code. Reference: Section 9764.3, Business and Professions Code.

**History**

1. New section filed 5-27-2003 as an emergency; operative 5-27-2003 (Register 2003, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-24-2003 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-27-2003 order transmitted to OAL 9-22-2003 and filed 11-3-2003 (Register 2003, No. 45).

**§2318. Cemetery Salesman License Fee**

The cemetery salesman license fee shall be thirty dollars (\$30).

Note: Authority cited: Sections 9630 and 9756, Business and Professions Code. Reference: Section 9756, Business and Professions Code.

**History**

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).

2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).

3. Amendment filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22).

4. Amendment filed 5-22-87; operative 7-1-87 (Register 87, No. 23).

5. Amendment filed 2-5-91; operative 2-5-91 (Register 91, No. 10).

**§ 2319. Cemetery Salesman Re-Examination Fee**

Note: Authority cited: Sections 9630 and 9757, Business and Professions Code. Reference: Section 9757, Business and Professions Code.

**History**

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).

2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).

3. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).
4. Change without regulatory effect repealing section filed 4-8-97 pursuant to section 100, title 1. California Code of Regulations (Register 97, No. 15).

### **§ 2320. Cemetery Salesman License Renewal Fee**

The cemetery salesman license renewal fee shall be twenty-five dollars (\$25).

Note: Authority cited: Sections 9630 and 9759, Business and Professions Code. Reference: Section 9759, Business and Professions Code.

#### **History**

1. New Section 2313 filed 1-16-56; effective thirtieth day thereafter (Register 56, No. 2).
2. Renumbered from 2313 and amendment filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
3. Amendment filed 2-20-63; designated effective 4-1-63 (Register 63, No. 3).
4. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
5. Amendment filed 5-29-81; effective thirtieth day thereafter (Register 81, No. 22).
6. Amendment filed 5-22-87; operative 7-1-87 (Register 87, No. 23).
7. Amendment filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

### **§ 2321. Change of Name or Address Fee**

The fee for change of name or address on the records of the board shall be twenty-five dollars (\$25).

Note: Authority cited: Sections 9630 and 9761, Business and Professions Code. Reference: Section 9761, Business and Professions Code.

#### **History**

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 2-20-63; designated effective 4-1-63 (Register 63, No. 3). Editorial correction, Register 63, No. 16.
3. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
4. Amendment filed 5-22-87; operative 7-1-87 (Register 87, No. 23).
5. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

### **§ 2322. Cemetery Salesman Transfer Fee**

The fee for transfer of a cemetery salesman's license upon change of employer shall be twenty-five dollars (\$25).

Note: Authority cited: Sections 9630 and 9762, Business and Professions Code. Reference: Section 9762, Business and Professions Code.

#### **History**

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment filed 5-22-87; operative 7-1-87 (Register 87, No. 23).
4. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

### **§ 2323. Duplicate License Fee**

The fee for a duplicate license shall be twenty-five dollars (\$25).

Note: Authority cited: Sections 9630 and 9763, Business and Professions Code. Reference: Section 9763, Business and Professions Code.

History

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment filed 5-22-87; operative 7-1-87 (Register 87, No. 23).
4. Amendment of section and Note filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

**§ 2324. Reinstatement Fee**

The fee for reinstatement of a cemetery broker's license or salesman's license within a fiscal year shall be twenty-five dollars (\$25).

Note: Authority cited: Sections 9630 and 9764, Business and Professions Code. Reference: Section 9764, Business and Professions Code.

History

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 12-2-75; effective thirtieth day thereafter (Register 75, No. 49).
3. Amendment filed 5-22-87; operative 7-1-87 (Register 87, No. 23).
4. Amendment filed 6-15-95; operative 7-17-95 (Register 95, No. 24).

**Article 3. Applications and Licenses**

**§ 2326. Applications for Cemetery and Crematory Certificates of Authority**

(a) Certificate of Authority. Applications for a certificate of authority to operate a cemetery shall be filed on the form furnished by the board at the principal office of the board. In addition to the payment of the fees required by Section 2311 of these rules, each application shall be accompanied by the following:

(1) A certified copy of:

(A) Articles of incorporation.

(B) Application for permit to sell and issue securities.

(C) Permit to sell and issue securities.

(D) Application to the city or county planning commission for a cemetery use permit or rezoning for cemetery purposes, or both.

(E) Land use or zoning permit.

(F) Declaration of dedication to cemetery purposes certified by the county recorder.

(G) Deed to the property, contract of purchase or any other instrument which provides the applicant with merchantable title thereto.

(H) Endowment care trust agreement executed by the board of directors of the cemetery authority.

(2) A statement signed by a majority and verified by one of the directors of the applicant, which statement shall set forth:

(A) Names and addresses of the incorporators, directors, officers and trustees of the endowment care fund, including the person who will be in charge of sales, together with a statement of their experience and fitness to engage in cemetery business.

(B) Statement of compensation received or to be received by the officers, directors and all sales agents and/or managers.

(C) A complete and detailed financial statement showing assets, liabilities and reserve.

1. If the applicant is a new corporation, the statement shall designate the amount of stock subscribed, the consideration paid for all stock issued and the amount of promotional stock involved.

2. If the applicant has engaged in business for a period of time, the statements shall include complete operating profit and loss statements for the preceding three (3) years or such period of time as the applicant has been in business if less than three (3) years.

(D) Itemized statement of estimated receipts (from all sources, capitalization, sales, loans, etc.) and expenditures of the applicant for at least five (5) years or such other period as the board may require by written notice to the applicant.

(E) A statement setting forth the size, location and topography of, and water available for, the property to be used for cemetery purposes.

(F) A statement of the applicant's proposed plan of operation which shall include type of selling, approximate size or sales department, number of acres initially developed, etc.

(G) Statement of the amount deposited to the endowment care fund, type of investment made or to be made and the proposed rate of contribution for the future.

(3) An independent confirmation from the depository or other such proof of deposit of the initial contribution to the endowment care fund as required by Section 8738.1 of the Health and Safety Code of the State of California.

(4) A good and substantial map of the proposed cemetery site (scale not less than 1 inch to 500 feet) and surrounding area showing highways, access roads, etc., and area to be initially developed delineated thereon.

(5) Such other matters as the board may require by written notice to the applicant.

(b) Crematory License Application. Application for a crematory license shall be filed on the form furnished by the board at the principal office of the board. In addition to the payment of the fees required by Section 2311 of these rules, each application shall be accompanied by the following:

(1) A certified copy of:

(A) Articles of incorporation, if applicant is a corporation.

(B) Partnership agreement, if applicant is a partnership.

(C) Land use or zoning permit.

(D) Permit to operate a crematory issued by the local air pollution control district.

(E) Deed, lease or other instrument which provides the applicant with the right to possess and use the property where the business will be located.

(2) A statement signed by the applicant if the applicant is an individual; signed by the majority and verified by one of the directors, if the applicant is a corporation; or signed and verified by a majority of the partners, if applicant is a partnership, which statement shall set forth:

(A) A complete and detailed financial statement showing assets, liabilities, and reserves.

(B) A statement of proposed plan of operation which shall include the type of selling.

(C) A full, true, and complete copy of the standard agreement which will be used for funding of prearranged cremations.

(3) Plans and specifications of the crematory and building, which must be sufficient to allow the board to determine, among other things:

(A) Fire resistant character.

(B) Adequacy of storage for cremated and uncremated remains.

(4) Such other matters as the board may require by written notice to the applicant.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Sections 9715, 9716, 9717, 9765, 9781, 9782, 9783 and 9786, Business and Professions Code; and Section 8738.1, Health and Safety Code.

History

1. New Sections 2315 and 2316 filed 1-16-56; effective thirtieth day thereafter (Register 56, No. 2).
2. Renumbering of Sections 2315 and 2316 to 2326 and 2327 respectively filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
3. Amendment filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).
4. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

**§ 2326.1. Managers**

(a) Each cemetery for which a new certificate of authority is required shall be operated under the supervision of a managing officer qualified as such by the board.

(1) The applicant for a new certificate of authority, in addition to the requirements of Section 2326, will designate the managing officer. There shall be submitted with the application the written statement of such officer demonstrating that he has two years' experience in the cemetery business, or equivalent experience, which experience shall be commensurate with the size, type, and scope of the proposed activities of the cemetery authority. Additional managing officers who have been qualified and examined by the board may be designated by the applicant and can succeed the managing officer in the event of death, resignation, disability, or other inability to perform the required duties.

(b) Each crematory for which a crematory license is required shall be operated under the supervision of a manager designated by the applicant and qualified as such by the board. Additional managers who have been qualified and examined by the board may be designated by the applicant and can succeed the manager in the event of death, resignation, disability, or other inability to perform the required duties.

Note: Authority cited: Sections 9630 and 9787, Business and Professions Code. Reference: Sections 9715, 9717, and 9787, Business and Professions Code.

History

1. New section filed 3-11-77; effective thirtieth day thereafter (Register 77, No. 11).
2. Amendment filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).

**§ 2326.2. Managing Officer Examination [Repealer filed 6-3-85]**

**§ 2326.5. Approval to Share a Cemetery Manager**

Licensed cemeteries, upon approval by the Bureau, may designate a licensed cemetery manager to manage more than one licensed cemetery under the following conditions:

(a) The licensed cemeteries are under common ownership;

(b) The common owner has designated one cemetery as the main office. The main office is defined as a designated location registered with the Bureau where the principals of the licensed cemetery can be contacted;

(c) The licensed cemeteries are within a 60 mile radius of the main office;

(d) Each licensed cemetery requesting permission from the Bureau to share one designated cemetery manager, shall make a written request on application Form 21A2 (10/03) to the Bureau and pay the fee for requesting to share a designated cemetery manager. An inspection may be scheduled and completed to ensure that the conditions set forth in this section have been satisfied.

(e) The procedure for considering and granting approval to share a cemetery manager under this section shall be as follows:

(1) The Bureau shall inform an applicant requesting approval to share a cemetery manager, in writing, within 14 days of receipt whether the application is complete and acceptable for filing or is deficient and what specific information is required to complete the application.

(2) The Bureau shall make a decision within 30 days after the application is deemed to be completed whether the applicant meets the requirements for approval to share a cemetery manager. "Completion of an application" means that the applicant has filed a completed application form together with all required information, documentation, and fee.

(3) The minimum, median and maximum processing times for an application for approval to share a cemetery manager from the date of acceptance and filing of the initial application until the Bureau makes a final decision on the application are:

(A) Minimum – 7 days.

(B) Median – 14 days.

(C) Maximum – 30 days.

Note: Authority cited: Sections 9630, Business and Professions Code, Section 15376, Government Code. Reference: Sections 9723 and 9723.2, Business and Professions Code, Section 15376, Government Code.

#### History

1. New section filed 5-27-2003 as an emergency; operative 5-27-2003 (Register 2003, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-24-2003 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-27-2003 order, including amendment of subsection (d), transmitted to OAL 9-22-2003 and filed 11-3-2003 (Register 2003, No. 45).

### **§ 2327. Cemetery Salesman Application**

If an applicant for a license as a cemetery salesman changes employers after filing his application and before the license applied for is issued, such application shall be deemed void and the applicant must file another fee and application.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Sections 9701 and 9702.1, Business and Professions Code.

History

1. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

**§ 2328. Abandonment of Application for a Cemetery License**

Pursuant to Section 9702.5 of the Code, an applicant must qualify by written examination, notice of which will be forwarded to the applicant by the board. If the applicant fails to appear at the time and place designated by the board, the board may deem the application abandoned after the expiration of the following periods:

Cemetery broker... Six (6) months

Cemetery salesman ... Two (2) months

Provided, however, that an application shall not be deemed abandoned if an applicant has filed a written request to take a subsequent examination prior to the expiration of the appropriate time periods. In the absence of special circumstances, the applicant whose application has been deemed abandoned shall file a new application accompanied by the required fee.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Sections 9702.5 and 9715, Business and Professions Code.

History

1. New Section 2317 filed 1-16-56; effective thirtieth day thereafter (Register 56, No. 2).
2. Renumbered from 2317 and amendment filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
3. Amendment filed 3-11-77; effective thirtieth day thereafter (Register 77, No. 11).
4. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

**§ 2328.1. Cemetery Manager and Crematory Manager Application Form, Abandonment, and Review Processing Time**

(a) An applicant for examination or licensure as a cemetery manager or crematory manager shall complete an application, Form 21A3 (10/03).

(b) If an applicant for examination or licensure as a cemetery manager or crematory manager fails to take a required examination within 12 months after being notified of eligibility, or fails to apply for licensure within 12 months of being notified of passing the examination, the application or examination result shall be considered to have been abandoned. An application subsequent to the abandonment of a previous application or examination shall be considered a new application and must be accompanied by the required fees.

(c) The procedure for considering applications for examination and issuance of licenses under this section shall be as follows:

(1) The Bureau shall inform an applicant for examination or licensure as a cemetery manager or crematory manager, in writing, within 14 days of receipt whether the application is complete and acceptable for filing or is deficient and what specific information is required to complete the application.

(2) The Bureau shall make a decision within 60 days after the application is deemed to be completed whether the applicant meets the requirements for licensure or examination. "Completion of an application" means that the applicant has filed a completed application form together with all required information, documentation and fee.

(3) The minimum, median and maximum processing times for an application for examination or licensure as a cemetery manager or crematory manager from the date of acceptance and filing of the initial application until the Bureau makes a final decision on the application are:

(A) Minimum – 7 days.

(B) Median – 30 days.

(C) Maximum – 60 days.

Note: Authority cited: Sections 9630, Business and Professions Code, Section 15376, Government Code. Reference: 142(b), 9702.5, 9723.1, and 9787.3, Business and Professions Code, Section 15376, Government Code.

#### History

1. New section filed 5-27-2003 as an emergency; operative 5-27-2003 (Register 2003, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-24-2003 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 5-27-2003 order, including amendment of subsection (a), transmitted to OAL 9-22-2003 and filed 11-3-2003 (Register 2003, No. 45).

### **§ 2329. Abandonment of Application for a Certificate of Authority**

An application shall be deemed abandoned and all fees previously paid shall be deemed forfeited if the applicant for a certificate of authority refuses or fails to comply with the provisions of Section 2326 within one year from the date of written notification by the board of the documents or information required to be submitted. The applicant shall be notified in writing of such action. Any application so abandoned may not be reinstated; however, the applicant may file a new application accompanied by the required fees and documents.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Sections 9702.5, 9716, 9781 and 9782, Business and Professions Code.

History

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 3-11-77; effective thirtieth day thereafter (Register 77, No. 11).
3. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

### **§ 2330. Substantial Relationship Criteria**

For the purposes of denial, suspension or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a cemetery broker or salesman if to a substantial degree it evidences present or potential unfitness of a cemetery broker or salesman to perform the functions authorized by his or her license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

- (a) Conviction of a crime involving fiscal dishonesty.
- (b) Any violation of the provisions of Chapter 19, Division 3 of the Code.

Note: Authority cited: Sections 481 and 9630, Business and Professions Code. Reference: Section 481, Business and Professions Code.

#### **History**

- 1. Repealer and new section filed 3-11-77; effective thirtieth day thereafter (Register 77, No. 11). For prior history, see Register 73, No. 20.
- 2. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

### **§ 2331. Criteria for Rehabilitation**

(a) When considering the denial of a license under Section 480 of the Code, the board, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license, will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivisions (1) and (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

(b) When considering the suspension or revocation of a license on the ground that a cemetery broker or salesman has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his or her eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

(c) When considering a petition for reinstatement of a license under the provisions of Section 11522 of the Government Code, the board shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in subsection (a).

Note: Authority cited: Sections 482 and 9630, Business and Professions Code. Reference: Sections 480 and 482, Business and Professions Code.

History

1. Repealer and new section filed 3-11-77; effective thirtieth day thereafter (Register 77, No. 11). For prior history, see Register 73, No. 20.

2. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

**§ 2332. Interments in Non-Licensed Cemeteries**

Upon the request of a holder of a right of interment in a cemetery, the certificate of authority of which has lapsed or has been revoked, (Hereinafter referred to as “the nonoperating cemetery”), or on its own initiative, the Board may arrange through another cemetery or through such person or firm, or corporation, as it deems advisable, to make interments in the nonoperating cemetery. No such interments shall be authorized by the Board or made unless there has been paid in full to the Board sufficient funds to reimburse the actual direct cost of interment. The power and discretion conferred by law upon the Board to authorize such interments are hereby delegated to and conferred upon the Executive Secretary of the Board, or, in his absence from the office of the Board, the Acting Executive Secretary.

Notwithstanding the rules and regulations of the nonoperating cemetery relative to outside burial containers, the Board may authorize the use of such containers as it deems appropriate.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Section 9718, Business and Professions Code.

History

1. New section filed 3-11-77; effective thirtieth day thereafter (Register 77, No. 11).

2. Amendment of NOTE filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

**Article 4. Signs, Contracts, Literature, Etc.**

**§ 2336. Nonendowment Care Interment Property in an Endowment Care Cemetery**

(a) Signs. Each nonendowment care section of an endowment care property, containing property available for sale, shall be separately set off by signs prominently placed designating same as a nonendowment care section. These signs shall be at least 16 inches high and 24 inches wide and shall be mounted upright thus being perpendicular to level ground. Each sign shall contain the following:

(1) A heading containing the words "NONENDOWMENT CARE SECTION" in black lettering at least four inches high.

(2) The phrase "This section is nonendowment care interment property" in black lettering at least 1 1/4 inches high.

(b) Contracts, Literature, Etc. There shall be printed at the head of all contracts, literature, etc., pertaining to nonendowment care property, the following phrase:

"The property described herein is NONENDOWMENT CARE Interment Property."

The lettering shall appear in a minimum of 10-point type and the words "NONENDOWMENT CARE" shall be in capital letters.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Sections 8740, 8743 and 8744, Health and Safety Code.

**History**

1. New section 2320 filed 1-16-56; effective thirtieth day thereafter (Register 56, No. 2).
2. Renumbered from 2320 and amendment filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
3. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

**§ 2337. Nonendowment Care Cemeteries**

(a) Signs.

(1) Entrance Signs. Each nonendowment care cemetery shall post a sign at each entrance. These signs shall be at least 16 inches high and 24 inches wide and shall be prominently mounted upright thus being perpendicular to level ground. Each sign shall contain the following:

(A) A heading containing the words "NONENDOWMENT CARE" in black lettering at least four inches high.

(B) The phrase "This is a nonendowment care interment property" in black lettering at least 1 1/4 inches high.

(2) Office Signs. Each nonendowment care cemetery shall post a sign in the office or offices where sales are conducted. These signs shall be at least 8 inches high and 12 inches wide and shall contain the following:

(A) A heading containing the words "NONENDOWMENT CARE" in black lettering at least two inches high. (B) The phrase "This is a nonendowment care interment property" in black lettering at least three-fourths inch high.

(b) Contracts, Literature, Etc. There shall be printed at the head of all contracts, literature, publications, etc., of nonendowment care cemeteries the following phrase:

"This institution is operated as a 'NONENDOWMENT CARE' Interment Property."

The lettering shall appear in a minimum of 10-point type and the words "NONENDOWMENT CARE" shall be in capital letters.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Sections 8743 and 8744, Health and Safety Code.

History

1. New Section 2321 filed 1-16-56; effective thirtieth day thereafter (Register 56, No. 2).
2. Renumbering from 2321 to 2337 filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
3. Amendment of NOTE filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

**§ 2338. Cemetery Broker**

Each cemetery broker shall post in a conspicuous place in the office or offices where sales are conducted a legible sign which shall indicate that he is a licensed cemetery broker and his name shall be clearly indicated thereon. This sign shall be at least 5 1/2 inches high and 8 1/2 inches wide.

Note: Authority cited: Sections 9630 and 9713, Business and Professions Code. Reference: Section 9713, Business and Professions Code.

History

1. New Section 2322 filed 1-16-56; effective thirtieth day thereafter (Register 56, No. 2).
2. Renumbering from 2322 filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
3. Amendment of NOTE filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

**§ 2339. Form and Content of Crematory Contracts**

(a) Pursuant to Section 9784 of the Code, every contract shall be in writing and shall contain all of the agreements of the parties. Such a contract shall clearly state the following:

- (1) The total contract price.
- (2) Terms of payment.

(3) An itemized statement of charges including, as applicable, the following:

(A) Charges for preparation of the body.

(B) Charges for storage.

(C) Charges for permits.

(D) Charges for cremation and disposition.

(E) Charges for transportation.

(F) Any other charges, which shall be particularized.

(b) Any contract, arrangement or plan for the prearrangement of cremation or cremation services shall provide in sufficient detail the manner in which funds paid on account of such arrangements are to be handled including, but not limited to, the following:

(1) The name or names of the persons, firm or entity with custodial responsibility for such funds.

(2) The manner in which such funds and earnings thereon are held.

(3) A provision that any such prearrangement is wholly revocable at any time and that the person establishing such arrangement may recover funds and earnings thereon. Such funds, less an amount not to exceed ten percent of the earned income as a revocation fee, shall be furnished to the person establishing such arrangement within 15 days of receipt of a notice of revocation as provided in the prearrangement contract.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Section 9784, Business and Professions Code.

History

1. New section filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).

2. Amendment of NOTE filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

**§ 2339.1. Cemetery Contracts; Price Disclosure**

A contract for the sale of prearranged cemetery services or commodities, the price of which may be modified at the time of delivery of those services or commodities, shall contain the following disclosure statement on the face of the contract in 10-point bold type:

“YOU, THE PURCHASER, WILL HAVE TO PAY, AT THE TIME OF NEED, ANY ADDITIONAL CHARGES RESULTING FROM PRICE INCREASES FOR THE FOLLOWING PREARRANGED SERVICES AND COMMODITIES: . . . .”

Until January 1, 1984, a licensee may comply with this section by obtaining the purchaser's signature on an addendum which contains the disclosure statement. The licensee shall give the purchaser a copy of the signed addendum together with a copy of the contract of sale, and shall retain the original signed addendum and attach it to the contract of sale.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Section 8277, Health and Safety Code.

History

1. New section filed 12-27-82; effective thirtieth day thereafter (Register 83, No. 1).

**§ 2340. Maintenance of Records**

(a) Each crematory licensee and each holder of a certificate of authority who operates a crematory shall keep a record of all remains cremated and such record shall contain the following:

- (1) Name and address, if known, of the deceased.
- (2) Date burial permit was issued.
- (3) County issuing burial permit.
- (4) Name, address, and relationship of person or persons authorizing cremation and disposition.
- (5) Date of the contract for cremation.
- (6) Date, time, and place remains were picked up or received by the licensee.
- (7) Date and time of cremation.
- (8) Date, time, place, and type of disposition of the cremated remains or name of person or entity to whom the cremated remains were released.

(b) Upon abandonment of the license or termination of licensure, records required by this section shall be turned over to a cemetery approved by the board or to the board.

(c) This section shall not be interpreted to require the holder of a certificate of authority to maintain a separate set of records pertaining to cremations.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Sections 9719 and 9785, Business and Professions Code.

History

1. New section filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).
2. Amendment of Note filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

3. Amendment of subsection (a), and new subsection (c) filed 3-30-90; operative 4-29-90 (Register 90, No. 16).
4. Editorial correction restoring History 1 and 2 (Register 94, No. 29).

## **Article 5. Annual Reports**

### **§ 2350. Endowment Care Fund Reports**

The terminology of Section 9650(c) of the Code shall be deemed to require the certificate of the accountant or auditor preparing such statement and shall be deemed to have been complied with when prepared by a licensed independent certified public accountant or public accountant provided that such statements fully and accurately disclose the position of the endowment care fund and that such certificate does not contain disclaimers or qualifications such as to preclude the rendering of an independent opinion.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Section 9650, Business and Professions Code.

#### **History**

1. New section filed 9-30-57; effective thirtieth day thereafter (Register 57, No. 17).
2. Amendment filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).
3. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

### **§ 2351. Crematory Report**

Each crematory licensee shall file annually with the board a written report on the form prescribed by the board setting forth:

- (a) Total number of cremations made.
- (b) Disposition of cremations indicating the number which were:
  - (1) Burials at sea.
  - (2) Released to a cemetery authority.
  - (3) Released to the person or persons who authorized cremation.
  - (4) Other dispositions (describe).
- (c) The amount collected and funded for prearranged cremations.
- (d) The amount of funds invested in each of the investments authorized by Section 8778 of the Health and Safety Code.
- (e) Each annual report by a crematory licensee accepting funds for prearranged cremations shall be accompanied by a financial statement prepared by an independent licensed certified public accountant or public accountant.

Note: Authority cited: Sections 9630 and 9783, Business and Professions Code. Reference cited: Section 9785, Business and Professions Code.

History

1. New section filed 6-25-80; effective thirtieth day thereafter (Register 80, No. 26).

**Article 6. Special Care Funds**

*Preface*

*In the establishment of agreements between the cemetery authority and a person or persons bequeathing, granting, or giving funds or property in trust as allowed by the provisions of Section 8775 of the Health and Safety Code, the cemetery authority should consider other provisions of law applicable thereto. As an example thereof, reference is made to Division 3, Parts 4, 5 and 8, Chapters 1 and 2 of the Civil Code dealing with trusts. Further, if these particular trusts are not to be revocable by the trustor, such has been held to constitute an insurance business for which a certificate of authority from the Insurance Commissioner is required (See 4 Ops. Cal. Atty. Gen. 103 (NS-5568); 17 Ops. Cal. Atty. Gen. 24 (50/194)).*

**§ 2370. Special Trusts**

Trusts established for burial purposes pursuant to Section 8775 of the Health and Safety Code including cremation or other commodities or services furnished at the time of and in connection with such cremation or interment are under the supervision of the State Cemetery Board and must comply with the following requirements:

(a) All moneys paid directly or indirectly and all securities delivered under the trust agreement or any agreement collateral thereto shall constitute the "trust corpus."

(b) None of the trust corpus shall be used for payment of commission or other expenses of trust administration.

(c) The trust agreement shall specifically set forth any expenses to be charged to the trustor out of income to the trust or any portion of the trust corpus to be retained by the trustees or cemetery authority upon revocation and a copy thereof shall be delivered to the trustor; provided, however, such revocation fee to be retained by the trustee or cemetery authority shall not exceed ten (10) percent of the trust corpus.

(d) Other than as provided in Subsection (c) hereof, the trust income shall be used solely for the purposes authorized by Section 8775 of the Health and Safety Code.

(e) Unless specific property or securities are placed in trust by the trustor, investments of these funds shall be in investments authorized by law—for example, as authorized by Health and Safety Code Sections 8751 and 8751.1 as well as Civil Code Sections 2228 through 2239 and 2261.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Section 8775, Health and Safety Code.

History

1. New Article 6 filed 11-16-60; effective thirtieth day thereafter (Register 60, No. 23).
2. Amendment filed 9-2-69; effective thirtieth day thereafter (Register 69, No. 36).
3. Amendment filed 12-15-70; effective thirtieth day thereafter (Register 70, No. 51).
4. Amendment filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

**§ 2380. Disciplinary Guidelines**

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et. seq.), the board shall consider the disciplinary guidelines entitled "A Manual of Disciplinary Guidelines for Cemeteries, Crematories, Cremated Remains Disposers, Managers, Brokers, and Salespeople (September 1997)" which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation—for example, the presence of mitigating factors; the age of the case; evidentiary problems.

Note: Authority cited: Section 9630, Business and Professions Code; and Sections 11400.20 and 11400.21, Government Code. Reference: Sections 11400.20, 11400.21 and 11425.50(e), Government Code.

History

1. New section filed 7-20-98; operative 8-19-98 (Register 98, No. 30). For prior history, see Register 82, No. 35.

**Article 7. Disciplinary Proceedings**

Note: Authority cited: Section 9630, Business and Professions Code.

History

1. New Article 7 (Sections 2380 and 2381) filed 11-16-60; effective thirtieth day thereafter (Register 60, No. 23).
2. Repealer filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

**§ 2381. False or Misleading Representations**

Pursuant to Section 9726 of the Code, the board may suspend or revoke the license of any cemetery licensee or the certificate of authority of any cemetery corporation which engages in misrepresentation, dishonest dealings or fraudulent conduct in connection with a trust or other agreement authorized by Health and Safety Code Section 8775, including but not limited to misrepresentations concerning the revocability of such instrument or the amount of commission or trust expenses to be paid or deducted thereunder.

Note: Authority cited: Section 9630, Business and Professions Code. Reference: Sections 9726, 11200 and 11500, Business and Professions Code.

History

1. Repealer and new section filed 8-24-82; effective thirtieth day thereafter (Register 82, No. 35).

## **Article 7.5. Citation and Fines**

### **§ 2382. Issuance of Citations and Fines**

(a) The director of the Department of Consumer Affairs is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensee or registrant of the provisions of law referred to in section 2383 of this article.

(b) A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall inform the cited person that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the director within 30 days of the issuance of the citation. The citation shall be served upon the licensee personally or by certified mail.

(c) The amount of any fine to be levied by the director shall take into consideration the factors listed in section 2384 of this article and shall be within the range set forth in section 2383 of this article. In no case shall the total exceed \$2,500 for each investigation.

Note: Authority cited: Sections 102.1, 125.9, 148 and 9630, Business and Professions Code.  
Reference: Sections 125.9 and 148, Business and Professions Code.

#### **History**

1. New article 7.5 and section filed 5-25-93; operative 6-24-93 (Register 93, No. 22).
2. Amendment of section and Note filed 10-2-96; operative 11-1-96 (Register 96, No. 40).

### **§ 2383. Fines**

(a) The fine for a violation of the following provisions shall be from \$150 to \$1,500:

Rule.....	Description
2340 .....	Maintenance of records
2370 .....	Special trusts

#### **Business and Professions Code**

9679 .....	Employing unlicensed salespersons
9684 .....	Advertising statements
9702.2 .....	Cemetery broker bond
9719 .....	Access during inspection
9743 .....	Scattering remains
9749 .....	Scattering of remains
9785 .....	Filing crematory report

#### **Health and Safety Code**

7050.5 .....	Removal of remains from county
7051 .....	Removal of remains without authorization
7051.5 .....	Dental gold and silver
7052 .....	Disinterment without authority
7054 .....	Disposal in place other than cemetery
7054.7(a) .....	Commingling of cremated remains
8342 .....	Cremation-casket requirement
8360 .....	Loans to officers/directors
8362 .....	Loans to officers/directors
8733 .....	Trustee fees
8734 .....	Bond requirement
8738.2 .....	Endowment care funds
8747.5 .....	Books and records-availability
8751 .....	Endowment care fund investments
8777 .....	Special care funds
8778 .....	Special care fund investments

(b) The fine for a violation of the following provisions shall be from \$100 to \$1,000:

Rule .....	Description
2339 .....	Crematory contracts
2351 .....	Crematory report
2381 .....	Misrepresentation

**Business and Professions Code**

9682 .....	Representations re resale of property
9726 .....	Misrepresentations
9728 .....	Discharge of salespersons-report
9744 .....	Cremated remains disposer-permit
9745 .....	Cremated remains disposer-annual report
9767 .....	Payment of regulatory charges
9784 .....	Cremation restrictions

**Health and Safety Code**

7053 .....	Failure to release human remains
8120 .....	Notice re change in cemetery use
8277 .....	Contracts
8278 .....	Contract cancellation
8330 .....	Record of interment
8331 .....	Record of plot ownership
8573 .....	Pre-construction sale of crypts
8726 .....	Endowment care investments
8732 .....	Trustees
8732.1 .....	Trustees
8780 .....	Misrepresentation re endowment care
8781 .....	Misrepresentation re endowment care
9550 .....	Mausoleum construction without permit

(c) The fines for a violation of the following provisions shall be from \$50 to \$500:

Rule.....	Description
2336 .....	Nonendowment care signs
2337 .....	Nonendowment care signs
2338 .....	Cemetery broker signs
2339.1 .....	Cemetery contracts

**Business and Professions Code**

9680 .....	Compensation to unlicensed brokers
9709 .....	Display license
9710 .....	Return license
9711 .....	Notice of change in location
9713 .....	Cemetery broker sign

**Health and Safety Code**

7055 .....	Removal of human remains
8276 .....	Charges for markers
8309 .....	Regulations-availability
8734 .....	Bond
8740 .....	Nonendowment care signs
8741 .....	Endowment care signs-posting
8744 .....	Nonendowment care contracts
8745 .....	Revision of signs

(d) In his or her discretion, the director may issue a citation containing an order of abatement without levying a fine for the first violation of any provision set forth in subsections (a) through (c) above.

Note: Authority cited: Sections 102.1, 125.9, 9630 and 9658, Business and Professions Code.  
Reference: Section 125.9, Business and Professions Code.

**History**

1. New section filed 5-25-93; operative 6-24-93 (Register 93, No. 22).
2. Amendment of subsection (d) and Note filed 10-2-96; operative 11-1-96 (Register 96, No. 40).

**§ 2384. Citation Factors**

In assessing an administrative fine or issuing an order of abatement, the director shall give due consideration to the following factors:

- (a) The nature and severity of the violation.
- (b) The good or bad faith of the cited person or entity.
- (c) History of violations of the same or similar nature.

(d) Evidence that the violation was willful.

(e) The extent to which the cited person or entity has cooperated with the department's investigation.

(f) The extent to which the cited person or entity has mitigated or attempted to mitigate any damage or injury caused by the violation.

(g) Such other matters as justice may require.

Note: Authority cited: Sections 102.1, 125.9, 148 and 9630, Business and Professions Code.  
Reference: Sections 125.9 and 148, Business and Professions Code.

History

1. New section filed 5-25-93; operative 6-24-93 (Register 93, No. 22).
2. Amendment of first paragraph, subsection (e) and Note filed 10-2-96; operative 11-1-96 (Register 96, No. 40).

**§ 2385. Failure to Comply with Order**

(a) The time allowed for the abatement of a violation shall begin the first day after the order of abatement has been served or received. If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time from the director in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement. Any order granting a request for an extension shall be in writing and shall specify the new date for compliance.

(b) An order of abatement shall either be personally served or mailed by certified mail, return receipt requested. When an order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation charged within the time allowed shall constitute a violation and failure to comply with the order of abatement.

Note: Authority cited: Sections 102.1, 125.9, 148 and 9630, Business and Professions Code.  
Reference: Sections 125.9 and 148, Business and Professions Code.

History

1. New section filed 5-25-93; operative 6-24-93 (Register 93, No. 22).
2. Amendment adding subsection (a) designator, amendment of newly designated subsection (a), and amendment of Note filed 10-2-96; operative 11-1-96 (Register 96, No. 40).

**§ 2386. Contest of Citations**

(a) In addition to requesting a hearing provided for in subdivision (b)(4) of Section 125.9 of the code, the person cited may, within ten (10) days after service or receipt of the citation, notify the director in writing of his or her request for an informal conference regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served or received.

(b) The director shall hold, within 30 days from the receipt of the request, an informal conference with the person cited or his or her legal counsel or authorized representative. At the conclusion of the informal conference the director may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The director shall state in writing the reasons for his or her action and serve or mail, as provided in subsection (b) of Section 2382, a copy of his or her findings and decision to the person cited within ten days from the date of the informal conference. This decision shall mark the conclusion of the informal conference proceeding.

(c) The person cited does not waive his or her request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the director. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 days of the date of issuance in accordance with subdivision (b)(4) of Section 125.9 of the code.

Note: Authority cited: Sections 102.1, 125.9, 148 and 9630, Business and Professions Code.  
Reference: Sections 125.9 and 148, Business and Professions Code.

History

1. New section filed 5-25-93; operative 6-24-93 (Register 93, No. 22).
2. Amendment of section and Note filed 10-2-96; operative 11-1-96 (Register 96, No. 40).

**§ 2387. Unlicensed Practice**

The director of the Department of Consumer Affairs may issue citations against any unlicensed person who is acting in the capacity of a licensee under the jurisdiction of the department and who is not otherwise exempt from licensure. A citation issued pursuant to this section shall comply with Section 125.9 of the code. Each citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both an administrative fine and an order of abatement. Administrative fines shall be in a range from \$250 to \$2,500 for each investigation. Any sanction authorized for activity under this section shall be separate from and in addition to any other civil or criminal remedies.

Note: Authority cited: Sections 102.1, 125.9, 148 and 9630, Business and Professions Code.  
Reference: Sections 125.9 and 148, Business and Professions Code.

History

1. New section filed 5-25-93; operative 6-24-93 (Register 93, No. 22).
2. Amendment of section and Note filed 10-2-96; operative 11-1-96 (Register 96, No. 40).

**§ 2388. Failure to File an Annual Report**

(a) Any cemetery authority that does not file the annual report required by Section 9650 of the Business and Professions Code within the time prescribed by said Code

shall be assessed a fine by the director in an amount of four hundred dollars (\$400) per month for a maximum of five months. Failure to pay the fine within fifteen (15) days after receipt of written notification of the assessment or, where a timely request for waiver or reduction of the fine has been filed with the director, within fifteen days (15) after receipt of written notification of the director's decision in the matter, shall be cause for disciplinary action.

(b) A cemetery authority may request waiver or reduction of a fine by making a written request to the director therefor. The request shall be postmarked within the time specified above for payment of the fine and shall be accompanied by a statement showing good cause for the request.

(c) The director may waive or reduce the fine where a timely request is made and he or she determines, in his or her discretion, that the cemetery authority has made a sufficient showing of good cause for the waiver or reduction.

(d) In addition to requesting a hearing to be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the person cited may, within fifteen (15) days after service or receipt of the citation, notify the director in writing of his or her request for an informal conference regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served or received. An informal conference shall be in accordance with the procedures delineated in Section 2386, subdivisions (b) and (c).

Note: Authority cited: Sections 102.1, 125.9, 9630 and 9650.4, Business and Professions Code.  
Reference: Sections 125.9 and 9650.4, Business and Professions Code.

History

1. New section filed 10-2-96; operative 11-1-96 (Register 96, No. 40).
2. Amendment of subsection (a) filed 6-17-97; operative 7-17-97 (Register 97, No. 25).

**Article 9. Private Mausoleums and Columbariums**

**§ 2390. Construction**

(a) Private mausoleums and columbariums shall be constructed as allowed in Section 9600.6 of the Health and Safety Code.

(b) Solid type construction of private mausoleums and columbariums shall also comply with the methods and standards set forth in Part 5 of the Mausoleum and Columbarium Law, (commencing with Section 9501 of the Health and Safety Code), with the exception of Sections 9627, 9632, and 9646, and with the addition of the following construction methods:

Solid type construction is construction in which all bearing walls, beams, columns, floor slabs, and roof consists of marble or granite blocks, in solid form, pinned with non-corrosive structural metal pins as hereinafter described. The foundations and footings

shall be of poured-in-place reinforced concrete designed and constructed in conformity with the Uniform Building Code. All bearing walls, beams, columns, floor slabs, and roof shall be constructed in conformity with the requirements set forth in the Uniform Building Code, except as otherwise provided in this section. Structural members shall be not less than six inches (6") thick, if of granite construction, and eight inches (8") thick, if of marble construction. Each structural part shall be properly pinned and anchored to each other structural part. All vertical joints shall be pinned a maximum of thirty-six inches (36") on centers, with pins a maximum of eighteen inches (18") from a horizontal joint, or pinned with one pin per joint section, whichever spacing is smaller. All horizontal points shall be pinned a maximum of twenty-four inches (24") on centers, or in the case of wall slabs of width greater than twenty-four inches (24"), each slab shall be pinned to roof and floor with at least two pins. No pins shall be closer than four inches (4") to the corner of a stone. Pins shall be bronze, stainless steel or other non-corrosive structural metal, at least three-fourths inch (3/4") in diameter and six inches (6") long. Pins shall be properly grouted in one (1") holes drilled to a minimum depth of three inches (3"), except the foundations, where they shall be set in place when the concrete is poured. Each course shall be properly grouted solid. All joints services shall be properly roughened to give the binding surfaces a roughness necessary for proper binding. At all vertical joints there shall be proper cramps at each joint line of a similar non-corrosive variety. No course shall be less than eighteen inches (18") in height, and thirty-six (36") in length. The roof stone shall be pinned to the side walls. All joints shall be large enough to allow for expansion and contraction, and shall be raked at least one-half inch (1/2") deep, unless constructed of single slabs. Where granite or marble roof is constructed of more than one piece, and pitch is three inches (3") per twelve inches (12") or less, up-slope pieces must overlap down-slope pieces by a minimum of eight inches (8"). For pitches more than three inches (3") to six inches (6") per twelve inches (12"), this minimum overlap shall be four inches (4"). For a slope steeper than six inches (6"), this minimum overlap shall be one and one inches (1 1/2"). Where granite or marble roof stone is level or nearly level, and terminated in a vertical joint on one or more sides, this vertical joint shall be protected by a superimposed cap, along whose edge a drainage trough shall be cut in the roof stone of such size and slope as to prevent moisture from entering the bed joint between roof stone and cap. All interior and exterior fastenings for hangers, clips, doors, and other objects shall be of copper base alloy, aluminum, copper, or stainless steel of adequate gauges. All exterior metals used for doors, window frames, skylights, gutters, downspout, flashing, or in embellishment shall be of copper, copper-based alloy, aluminum, or stainless steel of gauges structurally determined.

Note: Authority cited: Sections 102.1 and 9630, Business and Professions Code. Reference: Section 9600.5, Health and Safety Code.

History

1. New article 9 (section 2390) and section filed 12-6-96; operative 1-5-97 (Register 96, No. 49).